



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/262,172 Confirmation No.: 9022
Applicant : MCGLOUGHLIN, STEVEN D.
Title : METHOD AND APPARATUS FOR ACCESSING AND
DISPLAYING MULTIMEDIA CONTENT
Filed : MARCH 3, 1999
TC/A.U. : 2172
Examiner : LY, ANH
Docket No. : UC98-075-2
Cust. No. : 8156

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22213-1450

APPEAL BRIEF

Dear Sir:

The following appeal brief is submitted pursuant to the appeal mailed on June 24, 2005 (received on June 27, 2005) in the above-identified application. Presented herewith is the Appeal Brief of the Applicants', as well as the requisite fee set forth in 37 CFR 1.17(f) and a petition plus fee for a 1 month extension.

STATUS OF CLAIMS

All claims (1-44) currently stand rejected.

This application was filed on March 3, 1999 as serial number 09/262,172 claiming priority to provisional patent application serial number 60/076,771 filed March 4, 1998. The original regular application contained six (6) claims, all of which were independent claims.

== First Office Action ==

Claims 1-6 were rejected by the Examiner in an Office Action dated May 22, 2001. *Rejection was under 35 U.S.C. §103(a): Hoffert (U.S. Pat. No. 5,903,892) in view of May (U.S. Pat. No. 5,544,354).*

Claim 5 was amended (syntax), and Claims 7 - 19 were added by the Applicant in its response dated November 21, 2001.

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

== Second Office Action ==

Claims 1-19 were rejected by the Examiner in an Office Action dated January 3, 2002. *Rejection was under 35 U.S.C. §103(a): Katseff (U.S. Pat. No. 5,822,737) in view of Logan (U.S. Pat. No. 6,199,076).*

Claims 7, 9, 11, 13, 15 and 17-19 were amended and claims 20 - 32 were added by the Applicant in its response dated June 24, 2002.

== Third Office Action ==

Claims 1-32 were rejected by the Examiner in an Office Action dated September 6, 2002. *Rejection was under 35 U.S.C. §103(a): Claims 1-6 and 20-23 were rejected based on Milne et al. (U.S. Pat. No. 6,421,692). Claims 7-19 and 24 were rejected based on Milne et al. (U.S. Pat. No. 6,421,692) in view of Slivka et al. (U.S. Pat. No. 6,061,695). Claims 25-32 were rejected based on Straub et al. (U.S. Pat. No. 5,905,492).*

Claim 9 was amended and claims 33-44 were added by the Applicant in its response dated February 6, 2003.

== Fourth Office Action ==

Claims 1-44 were rejected by the Examiner in an Office Action dated May 1, 2003. *Rejection was under 35 U.S.C. §103(a): Claims 1-19 and 25-44 were rejected based on Shoji et al. (U.S. Pat. No. 5,764,908). Claims 20 - 24 were rejected based on Shoji et al. (U.S. Pat. No. 5,764,908) in view of Milne et al. (U.S. Pat. No. 6,421,692).*

Claim 25 was amended by the Applicant in its response dated October 1, 2003.

== Fifth Office Action ==

Claims 1-44 were rejected by the Examiner in an Office Action dated December 24, 2003. *Rejection was under 35 U.S.C. §103(a): Claims 1-19 and 25-44 were rejected based on Mogul et al. (U.S. Pat. No. 6,243,761). Claims 20 - 24 were rejected based on Mogul et al. (U.S. Pat. No. 6,243,761) in view of Milne et al. (U.S. Pat. No. 6,421,692).*

Applicant's response is dated April 26, 2003.

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

== Sixth Office Action ==

Claims 1-44 were rejected in a Final Rejection by the Examiner in an Office Action dated May 19, 2004. *Rejection was under 35 U.S.C. §103(a): Claims 1-19 and 25-44 were rejected based on Mogul et al. (U.S. Pat. No. 6,243,761). Claims 20 - 24 were rejected based on Mogul et al. (U.S. Pat. No. 6,243,761) in view of Milne et al. (U.S. Pat. No. 6,421,692).*

Applicant filed a Request for Continued Examination (RCE) which included amendments to claims 1-6, 19, 25, 29 and 37 by the Applicant in a response dated November 19, 2004.

== Seventh Office Action ==

Claims 1-44 were rejected in a Rejection by the Examiner in an Office Action dated February 24, 2005. *Rejection was under 35 U.S.C. §103(a): Claims 1-44 were rejected based on Hoffert et al. (see first Office Action) (U.S. Pat. No. 5,903,892) in view of Loveria (U.S. Publ. No. 2004/0090466).*

Applicant filed a Notice of Appeal June 24, 2005, received by OIPE June 27, 2005.

STATUS OF AMENDMENTS

The claims now pending have not been modified subsequent to filing of the Request for Continued Examination (RCE).

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

SUMMARY OF CLAIMED SUBJECT MATTER

Referring to the specification and drawings, the invention is defined in the claims involved in the appeal. The summary of claimed subject matter is with respect to each of the independent claims (Claims 1 - 6, 19, 25, 29 and 37) and each of the dependent claims separately argued.

Independent Claim 1.

An apparatus is described for accessing and displaying multimedia content (page 2, lines 15-20; page 3, lines 11-14), which comprises the following elements.

(a) database means (FIG. 1C element 20; FIG. 1B element 14; page) for storing multimedia content records (FIG. 1B elements 14, 16; page 3, lines 3-9) and associated references to media files (FIG. 1B element 18; page 6, lines 12-15) for a multimedia presentation (FIG. 1D element 22a; FIG. 1G element 48; FIG. 1H element 52; FIG. 1J element 22b; FIG. 2 element 62; page 2, lines 8-15; page 5, lines 6-7) and

(b) software engine means (FIG. 1B element 10; page 3, lines 1-5; page 4, lines 1-5), executable on a computer, for seamlessly accessing a content record (FIG. 1B, element 16; page 6, lines 9-17) in said database means according to a record index value (FIG. 1B double-sided arrow within element 16; index coupled to connector II in element 16; FIG. 1E elements 56a, 56b; page 3, lines 10-14; page 8, line 14) and locating and displaying associated media elements (FIG. 1B references within element 16 and element 18) referred to in the indexed content record;

wherein said software engine means is configured for interpreting embedded instructions within custom tags (page 4, lines 2-11) of said content record that direct access to other content records (page 4, lines 4-9) in said database; and

wherein said software engine means is configured for generating multiple windows (FIG. 2; FIG. 1B and FIG. 1D - 1J; page 3, lines 11-19) and controlling within

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

which window the media elements referred to in said content records are to be displayed.

Independent Claim 2.

An apparatus for accessing and displaying multimedia content (page 2, lines 15-20; page 3, lines 11-14), comprising:

a database (FIG. 1C element 20; FIG. 1B element 14; page) containing multimedia content records (FIG. 1B elements 14, 16; page 3, lines 3-9) and references to media files (FIG. 1B element 18; page 6, lines 12-15) for a multimedia presentation (FIG. 1D element 22a; FIG. 1G element 48; FIG. 1H element 52; FIG. 1J element 22b; FIG. 2 element 62; page 2, lines 8-15; page 5, lines 6-7);

a software engine (FIG. 1B element 10; page 3, lines 1-5; page 4, lines 1-5), executable on a computer, configured for seamlessly accessing (page 2, line 6; page 2, lines 15-20; page 10, lines 1-5) a content record (FIG. 1B, element 16; page 6, lines 9-17) in said database according to a record index value (FIG. 1B double-sided arrow within element 16; index coupled to connector II in element 16; FIG. 1E elements 56a, 56b; page 3, lines 10-14; page 8, line 14) and locating and displaying media elements (FIG. 1B references within element 16 and element 18) referred to in that content record; and

programming executable on said software engine (FIG. 1B element 10) for,
interpreting embedded instructions (page 4, lines 15-17) within custom tags (page 4, lines 2-11) of said content record for directing access to other content records (page 4, lines 3-9) in said database,
generating multiple display windows (FIG. 2; FIG. 1B and FIG. 1D - 1J; page 3, lines 11-19) within which content records are to be displayed,
controlling which window of said multiple windows that the media elements referred to in said content records are to be displayed (page 4, lines 4-11; page 6, lines 17-20; page 7, line 16 through page 8, line 6).

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

Independent Claim 3.

An apparatus for accessing and displaying multimedia content (page 1, line 2 in "title"; page 2, lines 15-20; page 3, lines 11-14), comprising:

- a programmable data processor (FIG. 3 element 104; page 9, lines 1-13);
- a database (FIG. 1C element 20; FIG. 1B element 14; page) containing multimedia content records (FIG. 1B elements 14, 16; page 3, lines 3-9) and references to media files (FIG. 1B element 18; page 6, lines 12-15) for a multimedia presentation (FIG. 1D element 22a; FIG. 1G element 48; FIG. 1H element 52; FIG. 1J element 22b; FIG. 2 element 62; page 2, lines 8-15; page 5, lines 6-7); and

programming (FIG. 1B element 10) associated with said programmable data processor for,

- accessing, seamlessly, (page 2, line 6; page 2, lines 15-20; page 10, lines 1-5) a content record (FIG. 1B, element 16; page 6, lines 9-17) in said database according to a record index value (FIG. 1B double-sided arrow within element 16; index coupled to connector II in element 16; FIG. 1E elements 56a, 56b; page 3, lines 10-14; page 8, line 14),

- locating and displaying media elements (FIG. 1B references within element 16 and element 18) referred to in said content record,

- interpreting embedded instructions (page 4, lines 15-17) within custom tags (page 4, lines 2-11) of said content record for directing access to other content records (page 4, lines 3-9) in said database,

- generating multiple display windows (FIG. 2; FIG. 1B and FIG. 1D - 1J; page 3, lines 11-19) within which content records are to be displayed,

- controlling which window of said multiple windows that the media elements referred to in said content records are to be displayed (page 4, lines 4-11; page 6, lines 17-20; page 7, line 16 through page 8, line 6).

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

Independent Claim 4.

A computer program (page 3, lines 2-6) for accessing and displaying multimedia content, comprising:

a set of instructions (FIG. 1B element 10) stored on a media accessible by a computer and executable as programming on said computer;

wherein said programming is configured for,

seamlessly accessing (page 2, line 6; page 2, lines 15-20; page 10, lines 1-5) a content record (FIG. 1B elements 14, 16; page 3, lines 3-9) in a database (FIG. 1C element 20; FIG. 1B element 14; page), according to a record index value (FIG. 1B double-sided arrow within element 16; index coupled to connector II in element 16; FIG. 1E elements 56a, 56b; page 3, lines 10-14; page 8, line 14), said records containing HTML content and custom tags readable by said programming (page 4, lines 2-17),

wherein one or more of said custom tags point to other content records in the database (page 4, lines 4-9),

locating and displaying media elements (FIG. 1B references within element 16 and element 18) within one of multiple windows generated by said programming and referred to in that content record (FIG. 2; page 4, lines 4-11; page 6, lines 17-20; page 7, line 16 through page 8, line 6).

Independent Claim 5.

A multimedia delivery apparatus (page 1, line 2 in "title"; page 2, lines 15-20; page 3, lines 11-14), comprising:

(a) a database (FIG. 1C element 20; FIG. 1B element 14; page) containing multimedia content records (FIG. 1B elements 14, 16; page 3, lines 3-9) and references to media files (FIG. 1B element 18; page 6, lines 12-15) for a multimedia presentation

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

(FIG. 1D element 22a; FIG. 1G element 48; FIG. 1H element 52; FIG. 1J element 22b; FIG. 2 element 62; page 2, lines 8-15; page 5, lines 6-7);

(b) a software delivery engine (FIG. 1B element 10; page 3, lines 1-5; page 4, lines 1-5) associated with said database and executable on a computer for seamlessly (page 2, line 6; page 2, lines 15-20; page 10, lines 1-5) displaying content records accessed according to a record index value (FIG. 1B double-sided arrow within element 16; index coupled to connector II in element 16; FIG. 1E elements 56a, 56b; page 3, lines 10-14; page 8, line 14) into said database; and

(c) programming (FIG. 1B element 10) within said delivery engine for, generating multiple display windows (FIG. 2; page 4, lines 4-11; page 6, lines 17-20; page 7, line 16 through page 8, line 6),

interpreting custom tags embedded in said content records of said database (page 4, lines 15-17), one or more of said custom tags pointing to other content records (page 4, lines 3-9) in said database, and

locating and displaying (page 4, lines 4-11; page 6, lines 17-20; page 7, line 16 through page 8, line 6) within one of said multiple display windows, said content record, regardless of whether said media elements are stored on a local storage device or stored remotely on an Internet server (FIG. 1B element 16 and 18; FIG. 3 element 130; page 4, lines 3-11) to provide a single seamless (page 2, lines 4-6; page 2, lines 15-22; page 4, lines 2-11) multimedia application for displaying media elements.

Independent Claim 6.

A method for displaying multimedia content (page 1, line 2 in "title"), comprising: storing in a database (FIG. 1B element 14; page 3, lines 7-9; original claims 1 and 6), multimedia content records (FIG. 1B elements 14, 16; page 3, lines 3-9) and references to media files (FIG. 1B element 18; page 6, lines 12-15) for a multimedia

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

presentation (FIG. 1D element 22a; FIG. 1G element 48; FIG. 1H element 52; FIG. 1J element 22b; FIG. 2 element 62; page 2, lines 8-15; page 5, lines 6-7);

seamlessly accessing (page 2, line 6; page 2, lines 15-20; page 10, lines 1-5), using a software engine (FIG. 1B element 10; page 3, lines 1-5; page 4, lines 1-5) executable on a computer, a content record (FIG. 1B, element 16; page 6, lines 9-17) in said database accessed according to a record index value (FIG. 1B double-sided arrow within element 16; index coupled to connector II in element 16; FIG. 1E elements 56a, 56b; page 3, lines 10-14; page 8, line 14);

interpreting custom tags (page 4, lines 2-17) embedded in said content records of said database, one or more of said custom tags pointing to other content records (page 4, lines 3-9) in said database;

generating multiple display windows (FIG. 2); and

locating and displaying media elements referred to in said content record within one or more of said multiple display windows (FIG. 2; page 4, lines 4-11; page 6, lines 17-20; page 7, line 16 through page 8, line 6).

Independent Claim 19.

An apparatus for accessing and displaying multimedia content (page 1, line 2 in "title"), comprising:

a database (FIG. 1C element 20; FIG. 1B element 14; page) containing multimedia content records (FIG. 1B elements 14, 16; page 3, lines 3-9) and references to media files (FIG. 1B element 18; page 6, lines 12-15) for a multimedia presentation (FIG. 1D element 22a; FIG. 1G element 48; FIG. 1H element 52; FIG. 1J element 22b; FIG. 2 element 62; page 2, lines 8-15; page 5, lines 6-7);

a software engine (FIG. 1B element 10; page 3, lines 1-5; page 4, lines 1-5), executable on a computer for seamlessly accessing (page 2, line 6; page 2, lines 15-20; page 10, lines 1-5) a content record (FIG. 1B, element 16; page 6, lines 9-17) in said database according to a record index value (FIG. 1B double-sided arrow within element

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

16; index coupled to connector II in element 16; FIG. 1E elements 56a, 56b; page 3, lines 10-14; page 8, line 14) and locating and displaying media elements referred to in that content record (page 4, lines 4-11; page 6, lines 17-20; page 7, line 16 through page 8, line 6); and

- programming executable on said software engine for,

- interpreting embedded instructions within custom tags (page 4, lines 4-17) of said content record for directing access to other content records (page 4, lines 3-9) in said database,

- generating multiple display windows (FIG. 2; FIG. 1B and FIG. 1D - 1J; page 3, lines 11-19) within which content records are to be displayed, and

- controlling which window of said multiple windows that the media elements referred to in said content records are to be displayed (page 4, lines 4-11; page 6, lines 17-20; page 7, line 16 through page 8, line 6);

- wherein at least one of said multimedia content records includes at least one custom tag (page 4, lines 4-17);

- wherein said software engine is configured to read said custom tag (page 4, lines 4-17);

- wherein said custom tag instructs said engine to fetch a corresponding multimedia content record from said database (page 4, lines 4-17) ;

- wherein said software engine reads said multimedia content record;

- wherein said software engine generates a temporary local copy (page 3, lines 17-22) of at least a portion of a content page (page 4, lines 4-17) from that multimedia content record for display; and

- wherein said at least said portion of said content page is passed to an interface program (page 6, lines 15-20) for display.

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

Independent Claim 25.

A multimedia delivery engine implemented as executable routines on a computer readable media for the seamless delivery of varied multimedia content to a user (FIG. 1B element 10; page 3, lines 1-5; page 4, lines 1-5), comprising:

(a) a reader routine (page 10, lines 10-23) configured to access records within a database (FIG. 1C element 20; FIG. 1B element 14; page) according to a record index value (FIG. 1B double-sided arrow within element 16; index coupled to connector II in element 16; FIG. 1E elements 56a, 56b; page 3, lines 10-14; page 8, line 14);

wherein said records comprise HTML content and custom tags (page 4, lines 2-17) configured for reading by said reader routine;

(b) a display window routine (FIG. 1B references within element 16 and element 18; page 3, lines 10-20; page 4, lines 12-15) for generating multiple display windows within which record content is displayed;

(c) a writing routine configured to write HTML text content of said HTML record content to a temporary cache file copy (page 3, lines 17-22) adapted for being read by an interface program (page 6, lines 15-20) for displaying said HTML text content in a display window;

(d) a custom HTML tag processing routine (page 4, lines 2-11) configured to,
(i) locate records (page 3, lines 1-16) in said database in response to a record index (FIG. 1B double-sided arrow within element 16; index coupled to connector II in element 16; FIG. 1E elements 56a, 56b; page 3, lines 10-14; page 8, line 14) or a custom tag (page 4, lines 3-9) within a record that points to another record of said database, copy record content to a temporary cache file (page 3, lines 17-22), and display HTML content of said temporary cache file inclusive of graphics and hyperlinks contained therein (page 3, lines 17-22),

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

- (ii) locate and seamlessly display images located within local storage devices within an illustration window in response to a custom tag directed at local storage resources (page 4, lines 2-11),
- (iii) load and run media components according to a custom tag from links or links within database records that are located in a local storage media or over a network connection as determined by said processing routine (page 4, lines 2-11),
- (iv) load web server-based content according to an additional custom tag (page 4, lines 12-17); and
- (e) wherein varied multimedia content from local and remote storage and content of additional database records may be accessed and displayed as one seamless multimedia application (page 2, lines 15-22; page 4, lines 9-11; page 5, lines 6-7).

Independent Claim 29.

A method of delivering varied multimedia from a network enabled computer system in response to the contents of a database (page 1, line 2 in "title"; page 2, lines 15-22), comprising:

- (a) accessing HTML record content within a database according to a record index value (FIG. 1B, element 16; page 6, lines 9-17; index coupled to connector II in element 16; FIG. 1E elements 56a, 56b; page 3, lines 10-14; page 8, line 14);
- (b) writing HTML text content of said HTML record content to a temporary cache file (page 3, lines 17-22) adapted for being read by an interface program for displaying said HTML text content in one of multiple display windows (page 6, lines 15-20);
- (c) locating records in said database (page 6, lines 12-20) in response to a custom tag (page 4, lines 2-17) pointing to said database, copying record content to a temporary cache file (page 3, lines 17-22), and controlling which window of said

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

multiple windows for displaying HTML content of said temporary cache file which can include graphics and hyperlinks (page 4, lines 4-11; page 6, lines 17-20; page 7, line 16 through page 8, line 6);

(d) locating and displaying images located within local storage devices within an illustration window (FIG. 2, page 4, lines 2-11) in response to a custom tag (page 4, lines 3-9) directed at local storage resources;

(e) interpreting embedded instructions within custom tags (page 4, lines 2-17) of said content record for directing access to other content records (page 4, lines 3-9) in said database;

(f) loading and running media components according to a custom tag from links or links within database records that may be located in a local storage media or over a network connection (page 4, lines 2-11); and

(g) loading web server-based content according to an additional custom tag (page 4, lines 12-17);

(h) wherein varied multimedia content from local and remote storage and content of additional database records may be accessed and displayed as one seamless multimedia application (page 2, lines 15-22; page 4, lines 9-11; page 5, lines 6-7).

Independent Claim 37.

An apparatus for providing multimedia tutorials (FIG. 2, page 3, lines 1-6), comprising:

a database (FIG. 1C element 20; FIG. 1B element 14; page) containing multimedia content records (FIG. 1B elements 14, 16; page 3, lines 3-9) and references to media files (FIG. 1B element 18; page 6, lines 12-15) for a multimedia presentation;

a software engine (FIG. 1B element 10; page 3, lines 1-5; page 4, lines 1-5), executable on a computer, said software engine seamlessly accessing a content record FIG. 1B elements 14, 16; page 3, lines 3-9) according to a record index value (FIG. 1B

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

double-sided arrow within element 16; index coupled to connector II in element 16; FIG. 1E elements 56a, 56b; page 3, lines 10-14; page 8, line 14) in said database and locating and displaying (page 4, lines 4-11; page 6, lines 17-20; page 7, line 16 through page 8, line 6) media elements referred to in that content record;

programming (FIG. 1B element 10) executable on said software engine for, interpreting (page 4, lines 15-17) embedded instructions within custom tags of said content record for directing access to other content records (page 4, lines 3-9) in said database,

generating multiple display windows (FIG. 2; page 4, lines 4-11; page 6, lines 17-20; page 7, line 16 through page 8, line 6) within which content records are to be displayed, and

controlling which window (page 4, lines 4-11; page 6, lines 17-20; page 7, line 16 through page 8, line 6) of said multiple windows that the media elements referred to in said content records are to be displayed;

wherein said software engine does not rely on the execution of individual components or programs which operate independently to display the various media content (page 2, lines 4-6; page 2, lines 8-20; page 4, lines 9-11); and

a user interface page 6, lines 15-20) upon which content is displayed by said software engine;

a toolbar (FIG. 1E element 40, page 8, lines 7-10) displayed by said software engine having buttons representing the media elements (FIG. 1E elements 42, 44, 46 and 54) available within said content record.

GROUND'S OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1 - 44 stand rejected under 35 U.S.C. §103(a) based on Hoffert et al. (see first Office Action) (U.S. Pat. No. 5,903,892) in view of Loveria (U.S. Publication No. 2004/0090466).

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

ARGUMENT

Rejection of Claims 1-44 under 35 U.S.C. §103(a) based on Hoffert et al. (see first Office Action) (U.S. Pat. No. 5,903,892) in view of Loveria (U.S. Publication No. 2004/0090466).

1. Independent Claim 1

The rejection of independent Claim 1 suffers from a number of shortcomings, any of which separately are sufficient to overcome the obviousness rejection, and which in combination provide what Applicant believes is overwhelming evidence that the obviousness rejection is unfounded. The shortcomings include invalid reference (after Applicant's filing date), solved a different problem, new principle of operation utilized, all claim limitations are not taught, elements in references are not equivalent, rejection based only on similarity of inventive concept or idea, modification based on hindsight in view of applicant's teaching, lack of specificity of suggestion to modify, "plain meaning" of recited elements ignored, obvious to try is not a standard of patentability, unworkable combination which renders reference unsuited for intended purpose, no need of element within references, no teaching suggestion or motivation found in the references for making the combination, and Applicant's invention was not considered as a whole.

(a) Loveria publication (2004/0090466) cited is not prior art.

Before proceeding it should be noted that the particular Loveria reference cited (2004/0090466) does not meet the requirements of a prior art reference. The Loveria publication referred to by the Examiner (2004/0090466) is a continuation-in-part (filed November 8, 1999), which was filed after both the provisional (filed March 4, 1998) and regular versions of the instant application (filed March 3, 1999). The Loveria reference contains substantial new matter as can be readily seen from the seven figures which show significant differences, the addition of multiple pages, the change in inventorship, and the claims, as well as of course the text of the specification itself.

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

Applicant will attempt to refrain from comment on the new material and restrict discussion to the material found in the prior Loveria application serial number 09/435,999 (published as 2003/0011627), so as not to enter into the prosecution record the text of material that is not prior art, and thus which should have no bearing on the discussion.

(b) Different objects and operating principles.

Prior to entering into a comparison between the claim elements in the instant application and the teachings of Hoffert and Loveria, the objects and principles of operation for both Hoffert and Loveria in relation to the claimed invention are considered.

Hoffert teaches a multimedia search engine. This is clearly seen from the Summary of Invention (col. 2, lines 27-33), which reads as follows: *"It is desirable to provide a search engine which is capable of searching the internet, or other large distributed network for multimedia information. It is also desirable that the search engine provide for analysis of the content of files found in the search and for display of previews of the information."*

The search engine described by Hoffert operates in a manner similar to conventional search engines, using *"crawling and indexing"* as described by col. 3, lines 18-27. Conventional search engines operate to create a body of information ABOUT the text found on the web pages which are crawled (or spidered); they are not a repository of all the data found on the internet. The information collected about web pages is created in the form of an index. Hoffert describes crawling the network *"to locate media files"*, as described by col. 3, lines 29-33, and appears to depart from a conventional search engine in that it can extract information about various forms of media, instead of relying solely on keywords found in the text, the lexical (textual) information about the media is then indexed for later searching. It is very significant to note that the system taught by Hoffert does not provide for "storing multimedia", as it

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

extracts lexical information about the media on the network. By matching up user search strings against the index of information a set of URLs are generated by the system of Hoffert which then point to web sites containing media which may be relevant based on the search.

Turning now to the other reference, Loveria teaches a video clip display apparatus (see paragraph [0027] of 2003/0011627 reference). Unless otherwise noted, references to the teachings of Loveria will be directed to the prior art 2003/0011627 publication, and not the 2004/0090466 publication. Referring to the summary of Loveria: “[0004] *The present invention is intended to overcome the obstacles inherent in the state of the art and to provide users of digital computer systems with the ability to access server-based video clips which include audio, video, text, and still images and to use their digital computer systems as video clip display units.*” (emphasis added)

Unlike the Hoffert reference, Loveria thus shares certain common objects with that of the instant Application. To wit, Loveria is directed to allow for the synchronized playback of video and other content. However, it will be recognized that many systems have been patented toward improving media playback and synchronization.

However, upon studying the Loveria reference it is quickly apparent that more specific objects of the invention as well as the operating principles have little relationship to that taught by the Applicant and reflected in Claim 1. Loveria is directed toward the viewing of a video clip. FIG. 4 of Loveria (see paragraph [0017]) describes playback operation, described as follows.

“FIG. 4 presents a flow diagram which outlines the basic logical sequence of steps which are executed in a real-time video clip player embodying the invention. The sequence begins by presenting 100 to a user of a video clip display unit the options of quitting 102 the video display unit, seeking help 104 from the unit as to how to operate the unit, or beginning 106 the sequence of steps necessary to display a video clip. If the user chooses to begin the display sequence, the video clip display unit accesses its memory and presents 110 the user with a list of data files which the user may attempt to display. Upon the selection of a data file, the file is examined 114 by the video clip player to determine if the component data files utilize data formats which are compatible with the display unit. If the files are compatible, the video clip player initiates 116 the

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

execution of a sequence of steps which will result in the display of the video clip. If the files are not compatible, an indication of incompatibility is displayed 118 and the user is prompted to make another selection.” (emphasis added)

It will be appreciated that a video clip as that term is known, and as used in the Loveria reference, is a short sequence of image frames, in some playable format. Loveria expands the video clip data with a file which can contain still image data, a file which contains text data, and a file which contains synchronization data (See FIG. 2 as well as paragraph [0013]) the data being either *“maintained as separate groups”* or *“interleaved”* with *“component data arranged and identified serially”*. Loveria has thus expanded the single video clip presentation to allow for including image frames or text files which are synchronized by the system to the video clip.

By contrast to the above, Applicant’s invention does not extend the video clip into a video clip data containing additional sequential files, but instead collects varied content in content records for display by a multimedia engine in one seamless multimedia application (see page 2, lines 15-22). That the instant application does not follow the video clip principle is also apparent from the record structure shown in FIG. 1B and the varied content and control display shown in FIG. 2. It should also be noted that Loveria displays the clip, text and user interface in locations determined by the program, wherein the presence, location, type of media, size, sequence to be followed and so forth of the varied media played back in the present invention are determined by the multimedia content record in response to user interaction.

Examiner provides no discussion about the nature of the modifications to be made to the references, or how these modification would be made to the references without departing from their stated objects and operating principles. Why and How would one combine a search engine, which is not a playback device and does not contain multimedia content with an apparatus for displaying a video clip? We are left with this open question not addressed in the rejection.

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

Applicant respectfully asserts that the objects and operating principles of the references do not support the rejection. However, the MPEP is quite clear on the importance of their proper consideration.

MPEP 2143.01A:

“THE PROPOSED MODIFICATION CANNOT CHANGE THE PRINCIPLE OF OPERATION OF A REFERENCE If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)”

MPEP 2143.01A:

“The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art.” *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). See also *In re Lee*, 277 F.3d 1338, 1342-44, 61 USPQ2d 1430, 1433-34 (Fed. Cir. 2002) (discussing the importance of relying on objective evidence and making specific factual findings with respect to the motivation to combine references); *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).” (Emphasis added)

In addition, in view of the difference in operating principles and objects of the invention, the combination appear wholly unworkable. It is uncertain how (or why) one would combine a search engine which generates search result strings with a player for encrypted data. As one could not turn the search engine software into a multimedia player according to Applicant’s invention without changing numerous principles of

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

operation, the combination is unworkable. In addition, as mentioned previously Claim 1 recites elements which are not described in either of the relied upon references.

Therefore, the objects and principles of operation differ between each of the three references. The two references relied upon, Hoffert or Loveria, have disparate objects and rely on different operating principles and their combination is improper.

(c) Lack of specificity about relied upon combination of references.

As touched on above, the support for the combination of Hoffert and Loveria lacks specificity. The Applicant will be so bold as to refer to it as a “sweeping generalization” of the elements within these references, aside from being largely incomprehensible. The entire text which describes why and how the combination is to be made is as follows.

“Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teachings of Hoffert with the teachings of Loveria, wherein the record media content to be located and displayed or presented to the user in the system provided therein (Hoffert’s col. 0, lines 5-30), would incorporate the user of multimedia presentation for media content, in the same conventional manner as described by Loveria (sections 0017-0021 and 0040). The motivation being to provide a more effective presentation and have a software engine for displaying/viewing a secure interactive multimedia presentation and for delivery of the multimedia of varied content to the user (Loveria’s fig. 7 and Hoffert’s col. 23, lines 1-6).”

There appear to exist numerous problems with the above obviousness assertion. From our reading of the above section, we gather that it is proposed to combine the concept of record media content with the general concept of multimedia presentation for media content. This general assertion does not address the specific recitations in

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

Claim 1, nor does it appear to provide the level of detail necessary in formulating such a combination.

The reasoning for putting forth the combination appears similarly insufficient, and relies only on what is known from hindsight from the instant application. No suggestions, or motivations arising from the relied upon references are even put forth.

When a lack of specificity exists in the suggestions to modify a reference then the Examiner has failed to make out a *prima facie* showing of obviousness. Further, Applicants' counsel has reviewed both the Hoffert and Loveria reference, and is unable to find either an explicit or an implied suggestion of Applicants' claimed elements. More particularly, the rejection makes no specific reference on how to create a workable combination and has articulated no clear statement as to the source of the suggestion to modify the Hoffert reference to yield or make obvious the elements of Applicants' combination. (See MPEP § 706.02(j)).

It is well founded that specific evidence for making a proposed combination is required. For example, this principle is concisely stated in reference to the outcome of appeal No. 2000-1201 for Application No. 08/817,825 (Page 6 - 7).

"The range of sources available, however, does not diminish the requirement for actual evidence. That is, the showing must be clear and particular. See, e.g., *C.R. Bard*, 157 F.3d at 1352, 48 USPQ2d at 1232. **Broad conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence.'**" *Id.* at 999, 50 USPQ2d at 1617 (citing *McElmurry v. Arkansas Power & Light Co.*, 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993); *In re Sichert*, 566 F.2d 1154, 1164, 196 USPQ 209, 217 (CCPA 1977)). (*emphasis added*)

Applicant's counsel has come to expect (albeit not approving of the practice) some measure of generalizations in a first or even second office action, however, Applicant is distressed that six previous office actions and a great deal of discussion about the shortcomings of these generalizations have been met with apparent indifference on the part of the Examiner. After being unable to establish a case in six

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

office actions, the Examination now returns back once again based on Hoffert, as was brought against the first office action. Applicant's case is being unduly subjected to unreasonable delay, especially since it appears that a *Prima Facie* case of obviousness has not been established.

(d) Obvious to try is not a standard of patentability.

Applicant notes that in the rejection of Claim 1, the Examiner appears to be arguing that in light of the rationale “...*to provide a more effective presentation and have a software engine for displaying/viewing a secure interactive multimedia presentation and for delivery of the multimedia of varied content to the user*”, that it would be “obvious to try” combining the Hoffert and Loveria to achieve Applicant's claimed result. However, “obvious to try” is not the standard of patentability of 35 U.S.C. 103, while further ignoring numerous considerations mitigating against such combination. This rationale also points to hindsight on the part of the Examiner, as the references are silent about the desirability of delivery of varied content to the user which relates more specifically to seamless access and display provided by the invention.

(e) No need of “element” within the cited reference.

Examiner has put forth a generalized concept from Loveria for combination with Hoffert, and not articulated one or more specific elements. It should be readily recognized that there is no need of enhanced video clip presentation mechanisms of Loveria within the media search engine of Hoffert. A search engine is directed to search and collection information about resources, it does not form presentations from the material collected.

As there is no need of the “element” (generalized concept), the combination is improper.

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

(f) Obviousness cannot be established using hindsight.

There is a lack of suggestion, motivation and incentive put forth in support of making the proposed combination. As there is nothing within the references which have been put forth as suggestion, or motivation for the combination, it is apparent that the motivation has arisen from the Applicant's own teachings.

Yet it is well founded that obviousness may not be established using hindsight or in view of the teachings or suggestions of the inventor. "Para-Ordnance Mfg. V. SGS Importers Int'l, 73 F.3d at 1087, 37 USPQ2d at 1239, citing W. L. Gore & Assocs., v. Garlock, Inc., 721 F.2d at 1553, 220 USPQ at 312-13 (Fed. Cir. 1983).

MPEP 2143.01 Suggestion or Motivation To Modify the References [R-1]

THE PRIOR ART MUST SUGGEST THE DESIRABILITY OF THE CLAIMED INVENTION

"There are three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art." In re Rouffet, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998) (The combination of the references taught every element of the claimed invention, however without a motivation to combine, a rejection based on a prima facie case of obvious was held improper.). **The level of skill in the art cannot be relied upon to provide the suggestion to combine references.** Al-Site Corp. v. VSI Int'l Inc., 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999).

Therefore, the combination again appears improper as only the motivations and incentive which arise from considering Applicant teaching supports attempting such a combination.

(g) Rejection based on similarity of inventive concept or idea.

Concepts and ideas are not patentable, and patent protection is accorded to specific embodiments, which embody numerous principles and carry them out.

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

Therefore it is immaterial if a contention can be made that the embodiment is directed toward a similar idea or inventive concept. For example, there exist a number of multi-blade shaving razors on the market each having a patent on its own patentably distinct elements directed toward the same inventive multi-blade concept.

Specific to the present case the concepts of using record structures are known and the concept of playing back media are known, yet this does infer that any device which uses either or both concepts is obvious.

Further exemplification of this principle is put forth in a concise manner by the Administrative Patent Judge in Appeal No. 96-0651 of Application No. 08/087,1641, heard February 11, 1999. *"Merely because two systems perform the same or a similar function does not, per se, make those systems patentably indistinct. For example, a quill and ink, a ballpoint pen and an electronic word processor may all perform the same function, i.e., the writing of a document, but, clearly, they do not perform the same function in the same manner."*

Considerations of general concepts are thus not relevant. Furthermore, attempting to distill down references to a "concept" or "gist" is also contrary to proper examination practice.

MPEP 2142.02: DISTILLING THE INVENTION DOWN TO A "GIST" OR "THRUST" OF AN INVENTION DISREGARDS "AS A WHOLE" REQUIREMENT
Distilling an invention down to the "gist" or "thrust" of an invention disregards the requirement of analyzing the subject matter "as a whole". *Jones v. Hardy*, 727 F.2d 1524 220 USPQ 1021, 1026 (Fed. Cir. 1984) ("treating the advantage as the invention disregards statutory requirement that the invention be viewed 'as a whole' ").

Therefore, Applicant contends that both the description of the combination and the motivation for making the combination are based on very broad concepts improperly distilled from the application, and do not provide the necessary support for the rejection.

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

(h) Elements not found or not equivalent to references.

Numerous elements of Claim 1 are either not found within the combination of references or are materially different from those shown in the cited references and, in any case, combined in a novel and nonobvious way. In some instances it appears that the plain meaning of the terms found in the claims, as supported by the specification, has not been properly considered. In order to establish a *Prima Facie* case of obviousness each element of the claim must be clearly present, or a case made as to why the inclusion of that specific element would be obvious.

(i) RE: "database means for storing multimedia content records"

In support of the rejection of Claim 1, the Examiner stated that *"Hoffert teaches a database means for storing multimedia content records and associated references to media files for a multimedia presentation"*.

However, that which is being taught by Hoffert does not comport to this element of the claims. Hoffert is a search engine, it does NOT store multimedia content whatsoever. A search engine does not generate multimedia presentations.

Before proceeding it should be noted that the terms in the above phrase can not be properly taken out of the context in which they are used in the claim. For example, it is improper to make simple keyword comparisons without understanding the meaning of the term as found in the claim and in the specification. There are a number of elements within the remaining portions of Claim 1 which provide further information about the attributes of the claimed element. For example, the software engine means accesses these content records and locates and displays the media elements referred to therein. In addition, the embedding of custom tags within the content records is described, and that the content records can direct access to other content records in the database means. Furthermore, the generation of multiple windows and controlling within which window the media elements are displayed as referred to by the content records.

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

In support of the rejection, the Examiner refers the Applicant to col. 8, lines 40-67, and fig. 1, col. 3, lines 1-18.

First, in lines 40-67 in col. 8 Hoffert describes how the media content is assessed to generate the text which is indexed within a search engine database. It will be noted that all search entries described in column 8, lines 29-41 are textual in nature, the user is not entering a video clip itself to be compared against the contents of the search engine database. Secondly, it can be seen the information which is collected about the media, such as including *"motion metric and brightness, contrast and color estimate"* and *"slow moving to fast"*, and *"Steven Spielberg"* are text-based information. It also goes on to discuss how the search engine *"would return a list of search results"* having an ordering based on the user search strings. There is nothing in this section which describes multimedia content records.

Examiner refers also to fig. 1 of Hoffert, although it is not clear what within this figure supposedly relates to *"database means for storing multimedia content records and associated references to media files for a multimedia presentation"*. Figure 1 of Hoffert depicts a very simple data flow diagram in which *"crawling and indexing 100"* are shown connected to various forms of media including *"audio or video/image 101"*, *"audio 102"*, *"video/image 103"*, *"MIDI 104"*, *"digital audio 105"* and finally results in *"build preview 106"*.

Finally, the disclosure at col. 3, lines 1-18 refers only to *"crawling the network, indexing media files, examining and analyzing the media file's content, and presenting summaries to users of the system of the content of the media files to assist the user in selection of a desired media file"*. Hoffert is not creating or generating a multimedia presentation. Indexing of the media information (not content) is mentioned; it should be recognized that "indexing" is a common term used for creating a special type of database for containing search terms in a manner that can be very readily searched.

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

Accordingly, there is no teaching within the Hoffert reference which can be properly equated to this first claim element *"database means for storing multimedia content records and associated references to media files for a multimedia presentation"*.

(ii) RE: "software engine means, executable on a computer, for seamlessly accessing a content record in said database means according to a record index value and locating and displaying associated media elements referred to in the indexed content record"

In support of the rejection of Claim 1, Examiner contends that the above claim element equates to what is described by Hoffert in col. 4, lines 1-18, which is reprinted as follows.

"The general format of this file for the described embodiment is provided at the end of the Specification. This file contains a series of records of textual information for each media file within the current directory. As will be discussed in greater detail below, the crawler scans for the media description file in each directory at a web site, and adds the text based information stored there into the index being created by the crawler. The mediaX file allows for storage of information such as additional keywords, abstract and classification data. Since the mediaX file is stored directly within the directory where the media file resides, it ensures an implicit authentication process whereby the content provider can enhance the searchable aspects of the multimedia information and can do so in a secure manner." (emphasis added)

Although the above section of Hoffert clearly delineates that textual information is stored and not actual media content, Applicant is unsure how the above comports to the claimed software engine means element recited in the claim. In any case there are a number of aspects of the software engine means which have been ignored, such as the *"locating and displaying associated media elements"*.

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

Examiner also refers again to figure 1 for support, and again it is uncertain how this diagram of spidering media content has any bearing on this claim element.

The section of Hoffert at column 3, lines 1-8 is referenced, which as described previously relates to describing the spidering process.

Accordingly, the Applicant is unable to find where any of the cited portions of Hoffert can be equated to *"software engine means, executable on a computer, for seamlessly accessing a content record in said database means according to a record index value and locating and displaying associated media elements referred to in the indexed content record"*.

(iii) RE: "wherein said software engine means is configured for interpreting embedded instructions within custom tags of said content record that direct access to other content records in said database".

The rejection puts forth column 5, lines 18-28; column 8, lines 42-67 and column 23, lines 1-45 as support for the rejection of the above claim element.

First, considering column 5, lines 18-28 it is seen that the phrase *"special tag"* is found, however, the tag is not found within what could be equated to content records and does not perform a function that can be equated to directing access to other content records in the database. The text of that section are as follows.

"In some embodiments, a special tag may be stored within the indexed text where the media reference occurs in the web page. When queries are posed to the full-text database of the stored HTML pages which reference media, the distance of the keyword text from the media reference tag can be used to determine if there is a relevant match. The standard distance from media reference to matching keyword utilized is ten words in each direction outwards from the media reference. The word distance metric is called "lexical proximity". For standard web pages where text surrounding media is generally relevant this is an appropriate value." (emphasis added)

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

The above describes a tag within the "indexed text" which obviously is within the text data base of the search engine, ...a database that contains text pointers to web sites whose media content has some relevance to the entered text search string. Hoffert goes on to describe the compact manner in which search string matches are determined. In this section *"stored HTML pages which reference media"* are mentioned which seems to make it clear that these pages are the pages being spidered for text and media information and goes on to discuss lexical proximity, which has no relation to any teaching within the instant application. An understanding as to the meaning of stored HTML pages is better understood by reading Hoffert column 6, lines 20-40. This section of Hoffert clearly does not comport to the recited claim element.

Secondly, considering column 8, lines 42-67 this was already discussed as describing the different metric by which text is generated in response to characteristics of the media content on the network being spidered.

Thirdly, considering column 23, lines 1-45 Hoffert describes the manner in which the user can interact with the search results. It will be understood that search results typically comprise links to the web site itself, and at times thumbprint images can be stored as well. In this section Hoffert describes viewer functionality coupled to the search engine to allow the user to more readily control the playback of any of the media associated with the search results. Hoffert mentions an alternative to the thumbprint being a short video or audio file as a previewing mechanism.

Accordingly, Applicant contends that nothing in the above sections can be considered to equate with the "software engine means" described and which "is configured for interpreting embedded instructions within custom tags of said content record that direct access to other content records in said database".

(iv) RE: "wherein said software engine means is configured for generating multiple windows and controlling within which window the media elements referred to in said content records are to be displayed".

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

The rejection continues miss-stating the teachings of Hoffert and then states that *"Hoffert does not clearly teach generating and controlling multiple windows the media elements referred to in said content record to be displayed"*, and introduces a combination with Loveria which is said to teach *"multimedia presentation for video, audio, graphics rich text and other textual data windows"* as seen in figs. 2-4, fig. 7, and sections [0017] through [0021] and in section [0040].

It should be noted that what the Examiner attributes to the Loveria reference does not match what is described in Applicant claim element. The claim element specifically states how the software engine means can generate multiple windows and control which window the media is displayed within as referred to in the content record. Now to consider the specific references within Loveria.

As mentioned previously the relied upon publication of Loveria 2004/0090466 is not prior art, wherein Applicant's counsel will describe to the best of our ability the closest fit of the teachings within the Loveria 2003/09011627 teachings.

The examiner refers to figs. 2-4, fig. 7, which are similar in the two publications, although the newer publication based on the CIP contains additional material, features, and elements which were not described in the parent case. Examiner has not stated what it is we are to find within figs. 2-4 and fig. 7 and how that relates to the element of Claim 1 to which it is used in support of the rejection. Again, the Applicant is left to conjecture.

Loveria Figure 2 illustrates files that can be added to the video clip file, figure 3 shows how each of these additional information elements is separately encrypted and decrypted and stored separately from one another. This by the way teaches away from the system of the Applicant, as it retains the information about the disparate media in the same data structure. It should be noted that Loveria does not disclose anything which can be properly equated to content records as described in the instant application. Figure 4 is a flowchart of operation of the video clip player, and it allows a user to get help, select a video clip for viewing, display file incompatibility message if

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

the file types are incompatible, execute a player sequence, and exit. Again there is nothing which describes the content record aspects of Claim 1.

Loveria Figure 7 depicts a sample screen 50 upon which the video clip is played as well as two areas for displaying text 52, 54. The use of multiple viewing windows is known so it is uncertain what we are to gather from this view. It should be recognized however, that Loveria is configured to play a single video clip and both the view clip and text are constrained for playback within the fixed windows shown. Loveria clearly does not provide "controlling within which window the media elements" are to be played back, as it has only one for displaying a media element (video). Even the still image in Loveria is shown in the single video window prior to playing the video clip. Loveria teachings are in contrast to the claimed invention wherein both the multiple windows and the controlling of which window is referred to in the content record. Again, Loveria has no commensurate structures and relies upon a single clip accompanied by text and optionally image data (described to show as a preview in the video display window prior to the video clip - see the middle of paragraph [0019] describing the count value determining if image presented or not).

Despite the immense section of text represented by paragraphs [0017] through [0021] the rejection again does not direct the reader to what we are to find and its relevance. Applicant therefore attempts to summarize this in the following: [0017] - tells of the encryption process for the video clip; [0018] - tells of adding identifier to discern media type; [0019] - discusses how the identifier is two characters within the file name of the video clip file; [0020] - tells about the compression and encoding and indicates that it is performed on the video clip and component data separately; and finally paragraph [0021] describes the flow chart of FIG. 4 which has already been described above. Applicant's counsel can see no relations herein that would justify equating this portion of Loveria to the above claim element.

Finally, paragraph [0040] of Loveria is also considered to provide support for *"wherein said software engine means is configured for generating multiple windows and*

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

controlling within which window the media elements referred to in said content records are to be displayed". Paragraph [0040] describes the user interface of Figure 7 for displaying a secure interactive multimedia presentation of decrypted video. Decrypted video can play at different scales and has controls for play, rewind, pause, stop, display images, and close. However, the above paragraph does not describe a software engine mean or controlling within which window the media elements referred to in the content records are to be displayed, and so forth.

(i) Invention to be considered as a whole.

In putting forth a rejection of the inventive subject matter, both the invention and the prior art references are to be considered as a whole. However, it appears that a piecemeal approach has been taken in which elements from the claim are taken out of context and misconstrued against elements which are generalized or misconstrued from the relied-upon references.

Examples of a piece-meal examination approach can be seen in how the elements describing "*multimedia content records*", "*software engine means*", "*seamlessly accessing content record ...according to record index*", "*interpreting embedded instructions*", "*generating multiple windows ...referred to in said content records*", and so forth.

Applicant's claimed device must be viewed as a whole, and it is not proper to dissect Applicant's device by citing references which attempt to show each of the dissected portions where no reference even suggests the combination.

MPEP 2141.02: *"THE CLAIMED INVENTION AS A WHOLE MUST BE CONSIDERED. In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. Stratoflex, Inc. v.*

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

Aeroquip Corp. 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983)"

Throughout the Office Action, it appears that attempts are made to distill the invention down into broad aspects which the Examiner can then consider to exist within the relied-upon references. For example, the use of indexing within the content records is distilled down to any form of searching as is found with Hoffert performing spidering (indexing) of content found on the world wide web. In another example, the "embedded instructions within custom tags of said content record" are distilled to any form of tag; the example from Hoffert which is relied upon is a "lexical proximity tag" conferring a relation between the textual search string elements/results and has no relation to the description of the custom tag recited in the Applicant claim.

However, Asserting a "gist" or "thrust" of the invention is contrary to considerations as a whole. Examination guidelines within the MPEP clearly indicate the impropriety of attempting to distill down an invention.

MPEP 2142.02: DISTILLING THE INVENTION DOWN TO A "GIST" OR "THRUST" OF AN INVENTION DISREGARDS "AS A WHOLE" REQUIREMENT

Distilling an invention down to the "gist" or "thrust" of an invention disregards the requirement of analyzing the subject matter "as a whole". *Jones v. Hardy*, 727 F.2d 1524 220 USPQ 1021, 1026 (Fed. Cir. 1984) ("treating the advantage as the invention disregards statutory requirement that the invention be viewed 'as a whole' ").

MPEP 2144.08:

"...the claimed invention may not be dissected into discrete elements to be analyzed in isolation, but must be considered as a whole. See, e.g., *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1548, 220 USPQ 303, 309 (Fed. Cir. 1983); *Jones v. Hardy*, 727 F.2d 1524, 1530, 220 USPQ 1021, 1026 (Fed.

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

Cir. 1983) ("treating the advantage as the invention disregards the statutory requirement that the invention be viewed 'as a whole'")." Emphasis added.

No support is provided in the rejection as to why the Examiner believes the claim elements can be distilled down and generalized for comparison with the references. The lack of support therein appears tantamount to considering the comparisons as being inherent. However, this is not proper as it runs contrary to the "As a whole" inquiry.

MPEP 2142.02: DISCLOSED INHERENT PROPERTIES ARE PART OF "AS A WHOLE" INQUIRY

"In determining whether the invention as a whole would have been obvious under 35 U.S.C. 103, we must first delineate the invention as a whole. In delineating the invention as a whole, we look not only to the subject matter which is literally recited in the claim in question... but also to those properties of the subject matter which are inherent in the subject matter *and* are disclosed in the specification. Just as we look to a chemical and its properties when we examine the obviousness of a composition of matter claim, it is this invention *as a whole*, and not some part of it, which must be obvious under 35 U.S.C. 103."

(j) Unworkable combination.

The combination of Hoffert and Loveria is unworkable. First the combination is put forth as a set of generalized concepts associated with media. Secondly, even those generalized concepts can not be combined workably. Specifically, the system of Loveria for broadcasting, receiving, decrypting, playing back and displaying encrypted multimedia (see Loveria paragraph [0007]) can not be combined with the web indexing method of Hoffert. What would it do, encrypt elements being spidered? Furthermore, the combination does not even result in the invention as claimed.

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

(k) No teaching, suggestion or motivation in references for combination.

Applicant asserts that there is no proper basis for attempting the combination of Hoffert and Loveria, as the only teachings suggestive of combination are to be found within the instant application.

The reasoning given in support of making the combination is:

"The motivation being to provide a more effective presentation and have a software engine for displaying/viewing a secure interactive multimedia presentation and for delivery of the multimedia of varied content to the user (Loveria's fig. 7 and Hoffert's col. 23, lines 1-6)."

The above apart from being far too general a statement to base a combination, has additional shortcomings. First, Hoffert is not configured for displaying multimedia, but for indexing content and generating text associated with the indexing of the multimedia content. Second, the notion of *"for delivery of the multimedia of varied content to the user"*, is an objective to be met and cogent structures are lacking within either reference for providing this functionality of the invention which provides for seamless accessing content records. Third, the aspects cited from the references do not provide any support for the combination. Specifically, Loveria FIG. 7 only provides teaching that applications can have controls and display in regions of the screen - these elements as mentioned not comporting with the teachings of the invention as recited in Claim 1. The text from Col. 23, lines 1-6 of Hoffert also do not support combining these elements, but instead address returning commands back to a browser to facilitate interactive viewing. Fourth, the sentence provided in support would be applicable to any system that has any association with multimedia content.

Consequently, the reasons put forth for attempting the combination do not meet with what is disclosed by the relied upon references, lack reasonable support for all claim elements and appear too general to be of any probative value. Applicant contends that since the claim describes objectives and principles of operation which are

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

not found in either reference, or the combination thereof, that the only places these teachings could have arisen is from Applicant's own invention.

Therefore, Applicant respectfully requests that the rejection of Claim 1 and the claims which depend therefrom be overturned.

2. Independent Claim 2

The Applicant contends that the rejection of Claim 2 suffers from a number of the same shortcomings as described in relation to the rejection of Claim 1, in particular:

- (a) Loveria publication (2004/0090466) cited is not prior art;
- (b) Different objects and operating principles;
- (c) Lack of specificity about relied upon combination of reference;
- (d) Obvious to try is not a standard of patentability;
- (e) No need of "element" within the cited reference;
- (f) Obviousness cannot be established using hindsight;
- (g) Rejection based on similarity of inventive concept or idea;
- (h) Elements not found or not equivalent to references;
- (i) Invention to be considered as a whole;
- (j) Unworkable combination; and
- (k) No teaching, suggestion or motivation in references for combination.

Claim 2 describes the use of multimedia content records which can reference media files, contain custom tags for accessing other content records, controlling which windows content is to be displayed, and which are configured for being seamlessly accessed. Hoffert does not teach the use of a database in which content records are stored, and neither reference teaches the use of a content record which can be comported to that within Claim 2. There is no ability to access other content records, or control where content is displayed, or even to contain the custom tags for accessing

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

other content records within the teachings of either reference.

In support Examiner relies upon Hoffert col. 8, lines 40-67; fig. 1, col. 3, lines 1-18, and col. 4, lines 1-18, and other references which were addressed. The inapplicability of these references was described within the argument above put forth toward the patentability of Claim 1.

The rejection does not address the elements of Claim 2. For example the claims recites *“seamlessly accessing a content record in said database according to a record index value and locating the displaying media elements referred to in that content record”*, which is one of the many elements for which no support is provided in the cited references. Hoffert does not provide a database of content records, as it is a web indexing mechanism, while Loveria only provides a clip playback structure including synchronization data, it does not define content records having the described attributes. There is no record index value used for the clips in Loveria, while the only attempt at seamless access is attempting through adding synchronization data to the clip file. These elements clearly do not comport with those recited in Claim 2.

Therefore, Applicant respectfully requests that the rejection of Claim 2 and the claims which depend therefrom be overturned.

3. Independent Claim 3

The Applicant contends that the rejection of independent Claim 3 suffers from a number of the same shortcomings as described in relation to the rejection of Claim 1, in particular:

- (a) Loveria publication (2004/0090466) cited is not prior art;
- (b) Different objects and operating principles;
- (c) Lack of specificity about relied upon combination of reference;
- (d) Obvious to try is not a standard of patentability;
- (e) No need of “element” within the cited reference;
- (f) Obviousness cannot be established using hindsight;

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

- (g) Rejection based on similarity of inventive concept or idea;
- (h) Elements not found or not equivalent to references;
- (i) Invention to be considered as a whole;
- (j) Unworkable combination; and
- (k) No teaching, suggestion or motivation in references for combination.

Claim 3 is directed to an apparatus for accessing and displaying multimedia content. Within the claim are descriptions for the use of multimedia content records which can reference media files for a multimedia presentation, contain custom tags for directing access to other content records in said database, controlling which windows within which media elements are to be displayed. These aspects are not taught by the relied upon references either separately or in combination thereof. Hoffert does not teach the use of a database in which content records are stored, and neither reference teaches the use of a content record which comports to those attributes recited in Claim 3. There is no ability to access other content records, or control where content is displayed, or even to contain the custom tags for accessing other content records within the teachings of either reference.

Accordingly, Applicant contends that a *prima facie* case of obviousness has not been established with regard to Claim 3. The relied upon elements of the references do not equate to those recited in the claim, the combination is unworkable toward rendering these aspects, and there is no support except for that lifted from Applicant's invention for attempting such a combination.

Therefore, Applicant respectfully requests that the rejection of Claim 3, and the claims which depend therefrom, be overturned.

4. Independent Claim 4

The Applicant contends that the rejection of independent Claim 4 suffers from a number of the same shortcomings as described in relation to Claim 1, in particular:

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

- (a) Loveria publication (2004/0090466) cited is not prior art;
- (b) Different objects and operating principles;
- (c) Lack of specificity about relied upon combination of reference;
- (d) Obvious to try is not a standard of patentability;
- (e) No need of "element" within the cited reference;
- (f) Obviousness cannot be established using hindsight;
- (g) Rejection based on similarity of inventive concept or idea;
- (h) Elements not found or not equivalent to references;
- (i) Invention to be considered as a whole;
- (j) Unworkable combination; and
- (k) No teaching, suggestion or motivation in references for combination.

Claim 4 is directed to a computer program for accessing and displaying multimedia content in response to execution. Within the claim are description for the use of multimedia content records in a database which can be accessed according to a record index value. Herein it will be recognized that Hoffert does not describe multimedia content records, not does it address accessing content records according to a record index value, but instead teaches the analysis of multimedia content and "indexing" information about media found on the web from which search result links and/or previews of the found links are provided (refer to the Hoffert's summary of invention, and col. 3, lines 19-26). The term "index" here within Hoffert does not have a similar meaning and certainly is not obtained by the same programming and data structures as recited in the claim.

To wit, the process of "*Media Crawling and Indexing*" is described in Col. 3, lines 19-26 of Hoffert as follows.

"2.0 Media Crawling and Indexing. FIGS. 2A-2C provides a description of a method for crawling and indexing a network to identify and index media files. Hypertext markup language (HTML) in the network is crawled to locate media files, block 201.

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

Lexical information (i.e., textual descriptions) is located describing the media files, block 202 and a media index is generated, block 203. The media index is then weighted, block 204 and data is stored for each media object, block 205. Each of these steps will be described in greater detail below.”

As can be seen from the above Hoffert teaches analyzing multimedia elements and creating text for use in content searches, the Applicant is clearly describing a different mechanism with content records accessed according to a record index value for accessing and displaying multimedia content as well as accessing other content records.

Hoffert does not teach the use of a database in which content records are stored, and neither reference teaches the use of a content record which comports to those attributes recited in Claim 4. There is no ability to access other content records, or control where content is displayed, or even to contain the custom tags for accessing other content records within the teachings of either reference.

Accordingly, Applicant contends that a *prima facie* case of obviousness has not been established with regard to Claim 4. The relied upon elements of the references do not equate to those recited in the claim, the combination is impotent in rendering these aspects, and there is no support except for that gleaned from Applicant's invention for attempting such a combination.

Therefore, Applicant respectfully requests that the rejection of Claim 4, and the claims which depend therefrom, be overturned.

5. Independent Claim 5

The Applicant contends that the rejection of independent Claim 5 suffers from a number of the same shortcomings as described in relation to Claim 1, in particular:

- (a) Loveria publication (2004/0090466) cited is not prior art;
- (b) Different objects and operating principles;
- (c) Lack of specificity about relied upon combination of reference;

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

- (d) Obvious to try is not a standard of patentability;
- (e) No need of "element" within the cited reference;
- (f) Obviousness cannot be established using hindsight;
- (g) Rejection based on similarity of inventive concept or idea;
- (h) Elements not found or not equivalent to references;
- (i) Invention to be considered as a whole;
- (j) Unworkable combination; and
- (k) No teaching, suggestion or motivation in references for combination.

Claim 5 is directed to a multimedia delivery apparatus, having a database of multimedia content records and references to media files for a multimedia presentation, and a software delivery engine, and well as programming within the delivery engine for performing a number of functions related to the content records.

The problems summarized from the rejection of Claim 1 also are applicable to Claim 5. Applicant puts forth that the teachings of Hoffert can not even be properly equated with the database aspect recited in the claim, because Hoffert does not contain multimedia content records, nor is it configured for a multimedia presentation.

The use of multimedia content records in a database are described for "*displaying content records accessed according to a record index value*"; which is not taught in either of the references and is not provided by the combination thereof.

The use of custom tags in the content records for pointing to other content records, is also described nowhere in any of these references. The only custom tag taught by Hoffert provides a lexical proximity function for assessing textual distance within the text data generated for the analyzed web multimedia (see col. 5, lines 18-28, col. 8, lines 42-67 and col. 23, lines 1-45).

The seamless aspect is further refined in Claim 5, by describing that the locating and displaying of multimedia in one of the generated multiple display windows is performed "*regardless of whether said media elements are stored on a local storage*

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

device or stored remotely on an Internet server to provide a single seamless multimedia application for displaying media elements". This aspect is not supported in the rejection and can not be properly equated to aspects of the cited references.

Again, there is no support for the content records as described by the applicant, the indexing of the content records and the custom tags wherein content records can access one another.

Hoffert does not teach the use of a database in which content records are stored, and neither reference teaches the use of a content record which comports to those attributes recited in Claim 5. There is no ability to access other content records, or control where content is displayed, or even to contain the custom tags for accessing other content records within the teachings of either reference.

Overall, it appears to the Applicant that the grounds for the rejection relies on the use of similar key words and general concepts, and not on the claimed structures as recited in apparatus Claim 5.

Accordingly, Applicant contends that a *prima facie* case of obviousness has not been established with regard to Claim 5. The relied upon elements of the references do not equate to those recited in the claim, the combination is impotent in rendering these aspects, and there is no support except for that which could arise from Applicant's invention for attempting such a combination.

Therefore, Applicant respectfully requests that the rejection of Claim 5 and the claims which depend therefrom be overturned.

6. Independent Claim 6

The Applicant contends that the rejection of independent Claim 6 suffers from a number of the same shortcomings as described in relation to Claim 1, in particular:

- (a) Loveria publication (2004/0090466) cited is not prior art;
- (b) Different objects and operating principles;
- (c) Lack of specificity about relied upon combination of reference;

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

- (d) Obvious to try is not a standard of patentability;
- (e) No need of "element" within the cited reference;
- (f) Obviousness cannot be established using hindsight;
- (g) Rejection based on similarity of inventive concept or idea;
- (h) Elements not found or not equivalent to references;
- (i) Invention to be considered as a whole;
- (j) Unworkable combination; and
- (k) No teaching, suggestion or motivation in references for combination.

Independent Claim 6 is directed to a method for displaying multimedia content. The problems summarized above from the rejection of Claim 1 also are similarly evident for independent Claim 6. It should be again noted that the teachings of Hoffert can not be equated with the database aspect recited in the claim, because Hoffert does not contain multimedia content records, nor is it configured for a multimedia presentation. The first element recites storing multimedia content records and reference to media files in a database for a multimedia presentation. Hoffert as described with regard to the rejection of Claims 1-5 does not provide a multimedia content database at all.

Loveria provides no teaching which can be used to support the seamlessly accessing of the content records according to a record index value, as it provides a segmented playback file for synchronization but has no teaching of indexed multimedia content records.

Loveria is relied upon for locating and displaying media elements, however, Loveria provides no teachings which comport to the process of locating the displaying these elements in response to content records. The positioning of the media displays being controlled by the content record of the multimedia presentation in Applicant's method, but in neither of the relied upon references.

Furthermore, neither reference provides support for interpreting the custom tags within the content records which point to other content records in the database.

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

Overall, the teachings of the relied upon references can not be equated to elements within the claim and there is no teaching, suggestion or motivation for attempting the combination aside from that which is described by the Applicant.

Accordingly, Applicant contends that a *prima facie* case of obviousness has not been established with regard to Claim 6. The relied upon reference elements do not equate to those recited in the claim, the combination is impotent in rendering these aspects, and there is no support except for that gleaned from Applicant's invention for attempting such a combination.

Therefore, Applicant respectfully requests that the rejection of Claim 6, and the claims which depend therefrom, be overturned.

7. Dependent Claim 7

Claim 7 depends from Independent Claim 1 and in view of the discussion presented with regard to Claim 1, should be considered a *fortiori* allowable. However, there are aspects of Claim 7 which provide further distinction from that of Claim 1.

There is nothing within either reference which comports to the content records or the custom tag as those terms are used in the claim. Additional information is provided in Claim 7 regarding the custom tags. For example, the claim teaches that "*said custom tag instructs said engine to fetch a corresponding multimedia content record from said database*". As already described, the only tags referred to the references is a lexical proximity tag, and it does not provide the above function.

Therefore, Applicant respectfully requests that the rejection of Claim 7, and the claims which depend therefrom, be overturned.

8. Dependent Claim 8

Claim 8 depends from dependent Claim 7 and Independent Claim 1 and in view of the discussion presented with regard to Claim 1, should be considered a *fortiori* allowable. However, there are aspects of Claim 8 which provide further distinction from

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

that of Claim 1.

There is nothing within either reference which comports to the content records or the custom tag as those terms are used in the claim. Additional information is provided in Claim 8 regarding the custom tags. For example the claim teaches that "*said custom tag instructs said engine to fetch a corresponding multimedia content record from said database*". As already described the only tags referred to the references is a lexical proximity tag, and it does not provide the above function.

Therefore, Applicant respectfully requests that the rejection of Claim 8 be overturned.

9. Dependent Claim 9

Claim 9 depends from independent Claim 2 and in view of the discussion presented with regard to Claim 2, should be considered *a fortiori* allowable. However, there are aspects of Claim 9 which provide further distinction from that of Claim 2.

One important aspect discussed in Claim 9 is that of the software engine "*generates a temporary copy of at least a portion of a content page from that multimedia content record for display*". There is no support given for these elements in the rejection. One benefit of this aspect of Claim 9 is described in the specification, such as on page 4, lines 1-4, "*this allows the program to store commands for the engine in the HTML document itself*".

Therefore, Applicant respectfully requests that the rejection of Claim 9, and the claims depending thereof, be overturned.

10. Dependent Claim 10

Claim 10 depends from dependent Claim 9 and Independent Claim 2 and in view of the discussion presented with regard to Claim 2, should be considered *a fortiori* allowable. However, there are aspects of Claim 10 which provide further distinction from that of Claims 2 and 9.

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

There is nothing within either reference which comports to the content records or the custom tag as those terms are used in the claim. Additional information is provided in Claim 10 regarding the custom tags. For example the claim teaches that "*said custom tag instructs said engine to fetch a corresponding multimedia content record from said database*". As already described the only tags referred to the references is a lexical proximity tag, and it does not provide the above function.

Therefore, Applicant respectfully requests that the rejection of Claim 10 be overturned.

11. Dependent Claim 11

Claim 11 depends from independent Claim 3 and in view of the discussion presented with regard to Claim 3, should be considered *a fortiori* allowable. However, there are aspects of Claim 11 which provide further distinction from that of Claim 3.

There is nothing within either reference which comports to the content records or the custom tag as those terms are used in the claim. Additional information is provided in Claim 11 regarding the custom tags. For example the claim teaches that "*said custom tag instructs said engine to fetch a corresponding multimedia content record from said database*". As already described the only tags referred to the references is a lexical proximity tag, and it does not provide the above function.

Therefore, Applicant respectfully requests that the rejection of Claim 11, as well as claims depending therefrom, be overturned.

12. Dependent Claim 12

Claim 12 depends from dependent Claim 11 and independent Claim 3, and in view of the discussion presented with regard to Claim 3, should be considered *a fortiori* allowable. However, there are aspects of Claim 12 which provide further distinction from that of Claim 3.

One important aspect discussed in Claim 12 is that of the software engine

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

“generates a temporary copy of at least a portion of a content page from that multimedia content record for display”. There is no support given for these elements in the rejection. One benefit of this aspect of Claim 12 is described in the specification, such as on page 4, lines 1-4, *“this allows the program to store commands for the “engine” in the HTML document itself”*.

Therefore, Applicant respectfully requests that the rejection of Claim 12 be overturned.

13. Dependent Claim 13

Claim 13 depends from independent Claim 4 and in view of the discussion presented with regard to Claim 4, should be considered *a fortiori* allowable. However, there are aspects of Claim 13 which provide further distinction from that of Claim 4.

There is nothing within either reference which comports to the content records or the custom tag as those terms are used in the claim. Additional information is provided in Claim 13 regarding the custom tags. For example the claim teaches that *“said custom tag instructs said engine to fetch a corresponding multimedia content record from said database”*. As already described the only tags referred to the references is a lexical proximity tag, and it does not provide the above function.

Therefore, Applicant respectfully requests that the rejection of Claim 13 be overturned.

14. Dependent Claim 14

Claim 14 depends from dependent Claim 13 and independent Claim 4, and in view of the discussion presented with regard to Claim 4, should be considered *a fortiori* allowable. However, there are aspects of Claim 14 which provide further distinction from that of Claim 4.

One important aspect discussed in Claim 14 is that of the software engine *“generates a temporary copy of at least a portion of a content page from that*

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

multimedia content record for display". There is no support given for these elements in the rejection. One benefit of this aspect of Claim 14 is described in the specification, such as on page 4, lines 1-4, "*this allows the program to store commands for the engine in the HTML document itself*".

Therefore, Applicant respectfully requests that the rejection of Claim 14 be overturned.

15. Dependent Claim 15

Claim 15 depends from independent Claim 5 and in view of the discussion presented with regard to Claim 5, should be considered *a fortiori* allowable. However, there are aspects of Claim 15 which provide further distinction from that of Claim 5.

There is nothing within either reference which comports to the content records or the custom tag as those terms are used in the claim. Additional information is provided in Claim 15 regarding the custom tags. For example the claim teaches that "*said custom tag instructs said engine to fetch a corresponding multimedia content record from said database*". As already described the only tags referred to the references is a lexical proximity tag, and it does not provide the above function.

Therefore, Applicant respectfully requests that the rejection of Claim 15 be overturned.

16. Dependent Claim 16

Claim 16 depends from dependent claim 15 and independent Claim 5 and in view of the discussion presented with regard to Claim 5, should be considered *a fortiori* allowable. However, there are aspects of Claim 16 which provide further distinction from that of Claim 5.

One important aspect discussed in Claim 16 is that of the software engine "*generates a temporary copy of at least a portion of a content page from that multimedia content record for display*". There is no support given for these elements in

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

the rejection. One benefit of this aspect of Claim 16 is described in the specification, such as on page 4, lines 1-4, *"this allows the program to store commands for the engine" in the HTML document itself*.

Therefore, Applicant respectfully requests that the rejection of Claim 16 be overturned.

17. Dependent Claim 17

Claim 17 depends from independent Claim 6 and in view of the discussion presented with regard to Claim 6, should be considered *a fortiori* allowable. However, there are aspects of Claim 17 which provide further distinction from that of Claim 6.

There is nothing within either reference which comports to the content records or the custom tag as those terms are used in the claim. Additional information is provided in Claim 17 regarding the custom tags. For example the claim teaches that *"said custom tag instructs said engine to fetch a corresponding multimedia content record from said database"*. As already described the only tags referred to the references is a lexical proximity tag, and it does not provide the above function.

Therefore, Applicant respectfully requests that the rejection of Claim 17 be overturned.

18. Dependent Claim 18

Claim 18 depends from dependent claim 17 and independent Claim 6 and in view of the discussion presented with regard to Claim 6, should be considered *a fortiori* allowable. However, there are aspects of Claim 18 which provide further distinction from that of Claim 6.

One important aspect discussed in Claim 18 is that of the software engine *"generates a temporary copy of at least a portion of a content page from that multimedia content record for display"*. There is no support given for these elements in the rejection. One benefit of this aspect of Claim 18 is described in the specification,

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

such as on page 4, lines 1-4, *"this allows the program to store commands for the engine" in the HTML document itself*.

Therefore, Applicant respectfully requests that the rejection of Claim 18 be overturned.

19. Independent Claim 19

Claim 19 is an independent claim whose rejection, the Applicant asserts, suffers from a number of the same shortcomings as described in relation to the rejection of Claim 1, in particular:

- (a) Loveria publication (2004/0090466) cited is not prior art;
- (b) Different objects and operating principles;
- (c) Lack of specificity about relied upon combination of reference;
- (d) Obvious to try is not a standard of patentability;
- (e) No need of "element" within the cited reference;
- (f) Obviousness cannot be established using hindsight;
- (g) Rejection based on similarity of inventive concept or idea;
- (h) Elements not found or not equivalent to references;
- (i) Invention to be considered as a whole;
- (j) Unworkable combination; and
- (k) No teaching, suggestion or motivation in references for combination.

Claim 19 describes the use of multimedia content records which can reference media files, contain custom tags for accessing other content records, controlling which windows content is to be displayed, and which are configured for being seamlessly accessed. Hoffert does not teach the use of a database in which content records are stored, and neither reference teaches the use of a content record which comports to that within Claim 19. There is no ability to access other content records, or control where content is displayed, or even to contain the custom tags for accessing other

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

content records within the teachings of either reference.

In support Examiner relies upon Hoffert col. 8, lines 40-67; fig. 1, col. 3, lines 1-18, and col. 4, lines 1-18, and other sections. The inapplicability of these referenced sections was described within the argument above put forth toward the patentability of Claim 1.

The stated support for the rejection does not address all the elements of Claim 19. For example Claim 19 recites *“seamlessly accessing a content record in said database according to a record index value and locating the displaying media elements referred to in that content record”*, which is one of the many elements for which no support is provided in the cited references. Hoffert does not provide a database of content records, as it is a web indexing mechanism, while Loveria only provides a clip playback structure including synchronization data, it does not define content records having the described attributes. There is no record index value used for the clips in Loveria, while the only attempt at seamless access is attempting through adding synchronization data to the clip file. These elements clearly do not comport with those recited in Claim 19.

In addition, Claim 19 recites aspects of the custom tags. For example, the claim teaches that *“said custom tag instructs said engine to fetch a corresponding multimedia content record from said database”*. As already described, the only tags referred to in either of the references is a lexical proximity tag which does not provide the above functionality.

Still further, Claim 19 recites aspects of the software engine which *“generates a temporary copy of at least a portion of a content page from that multimedia content record for display”*. There is no support given for these elements in the rejection. One benefit of this aspect of Claim 19 is described in the specification, such as on page 4, lines 1-4, *“this allows the program to store commands for the “engine” in the HTML document itself”*.

Accordingly, Applicant contends that numerous aspects of the claims are not

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

found in either reference or combination, wherein the combination is unworkable toward obviousness, and there is no suggestion, motivation or incentive for attempting the combination aside from that which is taught by the Applicant.

Therefore, a *prima facie* case of obviousness has not been established against Claim 19, wherein Applicant respectfully requests that the rejection of independent Claim 19, and the claims which depend therefrom, be overturned.

20. Dependent Claims 20-24

Claims 20-24 depend from independent Claims 1-4, and 19 respectively, and in view of the discussion of shortcomings of the rejection in the independent claims, these dependent claims should be considered *a fortiori* allowable.

These dependent claims recite with greater particularity the seamless accessing of content records in the database. Specifically, that it *“does not rely on the execution of individual components of programs which operate independently to display the various media content not providing for any integration of the applications”*.

However, the Examiner appears to address the base claims and not the above aspect in providing support for the rejection of these dependent claims.

The Examiner admits that *“Hoffert does not teach to display the various media content”*, and relies on Loveria. It can be readily seen that Loveria is not silent in regard to the above aspect, but rather teaches away from it. Referring to paragraph [0028] in Loveria it is stated: *“The user then uses well known searching techniques to locate files which are compatible with the video clip player which is implemented on the user’s personal computer”*. The system of Loveria can detect that which is compatible, but clearly cannot perform the seamless accessing as described. It can also be seen in paragraphs [0031] - [0033] that Loveria discusses video with *“Computer implemented MPEG1 decompression drivers may be found, for example as a component of computer software packages...”*, and *“Decoders for audio data stored in this format are found in computer software distributed by the MICROSOFT Corporation”*, and so forth. There is

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

no mention of performing seamless accesses so that individual components are not relied upon, and which do not provide for integration of the applications.

Accordingly, Applicant asserts that there is no teaching in the relied upon references which comport to aspects of dependent Claims 20-24.

Therefore, Applicant respectfully requests that the rejection of Claims 20 - 24 be overturned.

21. Independent Claim 25

Claim 25 is an independent claim, the rejection of which, the Applicant asserts suffers from a number of the same shortcomings as described in relation to the rejection of Claim 1, in particular:

- (a) Loveria publication (2004/0090466) cited is not prior art;
- (b) Different objects and operating principles;
- (c) Lack of specificity about relied upon combination of reference;
- (d) Obvious to try is not a standard of patentability;
- (e) No need of "element" within the cited reference;
- (f) Obviousness cannot be established using hindsight;
- (g) Rejection based on similarity of inventive concept or idea;
- (h) Elements not found or not equivalent to references;
- (i) Invention to be considered as a whole;
- (j) Unworkable combination; and
- (k) No teaching, suggestion or motivation in references for combination.

Claim 25 describes a multimedia delivery engine implemented as executable routines on a computer readable media for seamless delivery of varied multimedia content to a user. The engine is described as having "*a reader routine*", "*display window routine*", a "*writing routine*", and a "*custom HTML tag processing routine*".

In support of the rejection a number of mis-statements are again made regarding

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

what is disclosed by the relied upon references.

It is stated that Hoffert describes "*a reader routine configured to access records within a database according to a record index value*", yet there are no 'content records' described within Hoffert as that term is used in the instant application, and no indexes to those content records which do not exist. Hoffert indexes the content on the web (spidering) and generates text information for multimedia based on analysis to facilitate searches.

It is indicated that Hoffert has a "*writing routine configured to write HTML text content of said HTML record content to a tempo cache file adapted for being read by an interface program*". There is no description within Hoffert of generating "*temporary HTML text content of said HTML record content*", there does not exist discussion of content records, and nowhere is there described copying HTML text from a content record to a temporary file.

Applicant believes that rejections against the custom tag processing section herein are the most grossly miss-stated as none of the five elements within this claim have any relation to either Hoffert or Loveria. This is not surprising as the custom tag described by Hoffert only provides information about textual proximity and is not used for locating records.

Accordingly, Applicant asserts that numerous aspects of the claims are not found in either reference or combination, the combination not only is unworkable as it does not result in the invention as claimed, and there is no suggestion, motivation or incentive for even attempting the combination.

Therefore, a *prima facie* case of obviousness has not been established against Claim 25, wherein Applicant respectfully requests that the rejection of independent Claim 25, and the claims which depend therefrom, be overturned.

22. Dependent Claims 26-27

Claims 26-27 depend from independent Claim 25 and in view of the discussion

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

presented toward the patentability of Claim 25 should be considered *a fortiori* allowable.

Details of another aspect of the seamless delivery are recited in Claim 26, *"wherein said varied multimedia content comprises both high-bandwidth media for storage across local devices and current and time-sensitive content for storage remotely on an Internet server"*. There is no support even for this object of the invention within the relied upon references, and certainly nothing which structurally comports to implementation of this feature.

Claim 27 expands on that recited in Claim 26 by describing a mass storage device.

Examiner does not discuss how the above claims supposedly can be equated with the combination of references.

Therefore, Applicant respectfully requests that the rejection of Claim 26-27 be overturned.

23. Dependent Claim 28

Claim 28 depends from independent Claim 25 and in view of the discussion of the shortcomings of the rejection for Claim 25, should be considered *a fortiori* allowable.

This dependent claim recites with greater particularity the multimedia delivery engine which specifically: *"does not rely on the execution of individual components of programs which operate independently to display the various media content while not providing for any integration of the applications"*.

However, the Examiner appears to address the base claims and not the above aspect in this dependent claim.

Earlier the Examiner admitted that *"Hoffert does not teach to display the various media content"*, and relies on Loveria. It can be readily seen that Loveria is not silent in regard to the above aspect, but rather teaches away from it. Referring to paragraph [0028] in Loveria it is stated: *"The user then uses well known searching techniques to locate files which are compatible with the video clip player which is implemented on the*

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

user's personal computer". The system of Loveria can detect that which is compatible, but clearly cannot perform the seamless accessing as described. It can also be seen in paragraphs [0031] - [0033] that Loveria discusses video with "*Computer implemented MPEG1 decompression drivers may be found, for example as a component of computer software packages...*", and "*Decoders for audio data stored in this format are found in computer software distributed by the MICROSOFT Corporation*", and so forth. There is no mention of performing seamless accesses so that individual components are not relied upon, and which do not provide for integration of the applications.

Accordingly, Applicant assert that no teaching exists in the relied upon references which comport to aspects of dependent Claim 28.

Therefore, Applicant respectfully requests that the rejection of Claim 28 be overturned.

24. Independent Claim 29

Claim 29 is an independent claim that the Applicant asserts suffers from a number of the same shortcomings as described in relation to the rejection of Claim 1, in particular:

- (a) Loveria publication (2004/0090466) cited is not prior art;
- (b) Different objects and operating principles;
- (c) Lack of specificity about relied upon combination of reference;
- (d) Obvious to try is not a standard of patentability;
- (e) No need of "element" within the cited reference;
- (f) Obviousness cannot be established using hindsight;
- (g) Rejection based on similarity of inventive concept or idea;
- (h) Elements not found or not equivalent to references;
- (i) Invention to be considered as a whole;
- (j) Unworkable combination; and
- (k) No teaching, suggestion or motivation in references for combination.

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

Claim 29 describes a method of delivering varied multimedia from a network enabled computer system in response to the contents of a database.

Applicant asserts that in support of the rejection a number of mis-statements are again made regarding what is disclosed by the relied upon references.

First of all the Hoffert reference fails immediately as it does not “*deliver varied multimedia content*” as recited in the preamble of Claim 29. It fails of course also in a number of regards in association with the body of Claim 29, such as with regard to the use of content records, accessing content records with a record index value, writing text from the content record into a temporary cache file, locating records in response to a custom tag, copying content to the temp cache, controlling which window that HTML content displayed, directing access to other content records, loading and running media components links or links within database, and of course the seamless access and display of the content. These elements, and their substantive lack of teaching thereof in the relied-upon references, have been discussed in relation to prior claims.

Taking one of these claim elements in greater detail, consider: “*loading and running media components according to a custom tag from links or links within database records that may be located in a local storage media or over a network connection*”; it appears that equating this to the references makes no sense. Hoffert generally describes analyzing the content of files on the Internet (see summary of invention) finding or creating information about the media in a lexical form and storing it in relation to the media element to aid in searching for media. The special tag is described as being stored within the indexed text such that the “*distance of the keyword text from the media reference tag can be used to determine if there is a relevant match*”.

The tag references in Hoffert can not be equated to that described in Claim 29, or the other claims. The tags described by Hoffert do not provide for linking content records or in this case for “*loading and running of media components*” which fits in with

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

the delivery of “*varied multimedia content*” as recited in the preamble.

The references do not share common objectives or principles of operation with each other or the invention as recited in Claim 29, and the bulk of the claim elements are not taught in either reference.

Accordingly, Applicant asserts that numerous aspects of the claims are not found in either reference or combination, the combination is unworkable as it does not result in invention as claimed, and there is no suggestion, motivation or incentive for even attempting the combination.

Therefore, a *prima facie* case of obviousness has not been established against Claim 29, wherein Applicant respectfully requests that the rejection of independent Claim 29, and the claims which depend therefrom, be overturned.

25. Dependent Claims 30-31

Claims 30-31 depend from independent Claim 29 and in view of the discussion presented toward patentability of Claim 29 should be considered *a fortiori* allowable.

Details of another aspect of the seamless delivery are recited in Claim 30, “*wherein said varied multimedia content comprises both high-bandwidth media for storage across local devices and current and time-sensitive content for storage remotely on an Internet server*”. There is no support for this object of the invention within the relied upon references, and clearly nothing which structurally comports to implementation of this feature. Claim 31 expands on that recited in Claim 30 by describing a mass storage device.

Examiner does not discuss how the above supposedly can be equated with the combination of references.

Therefore, Applicant respectfully requests that the rejection of Claim 30-31 be overturned.

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

26. Dependent Claim 32

Claim 32 depends from independent Claim 29 and in view of the discussion of the shortcomings of the rejection for Claim 29, should be considered a *fortiori* allowable.

These dependent claims recite with greater particularity the multimedia delivery engine which specifically: *"does not rely on the execution of individual components of programs which operate independently to display the various media content while not providing for any integration of the applications"*.

However, the Examiner appears to address the base claims and not the above aspect in this dependent claim.

Earlier the Examiner admitted that *"Hoffert does not teach to display the various media content"*, and relies on Loveria. It can be readily seen that Loveria is not silent in regard to the above aspect, but rather teaches away from it. Referring to paragraph [0028] in Loveria it is stated: *"The user then uses well known searching techniques to locate files which are compatible with the video clip player which is implemented on the user's personal computer"*. The system of Loveria can detect that which is compatible, but clearly cannot perform the seamless accessing as described. It can also be seen in paragraphs [0031] - [0033] that Loveria discusses video with *"Computer implemented MPEG1 decompression drivers may be found, for example as a component of computer software packages..."*, and *"Decoders for audio data stored in this format are found in computer software distributed by the MICROSOFT Corporation"*, and so forth. There is no mention of performing seamless accesses so that individual components are not relied upon, and which do not provide for integration of the applications.

Accordingly there is no teaching in the relied upon references which comport to aspects of dependent Claim 32.

Therefore, Applicant respectfully requests that the rejection of Claim 32 be overturned.

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

27. Dependent Claim 33

Claim 33 depends from independent Claim 3 and in view of the discussion presented toward patentability of Claim 3, it should be considered a *fortiori* allowable.

The claim provides additional details about the programming as a “*multimedia engine configured to locate and display all of the media elements referred to within a given content page record of said database file*”. There is nothing which comports to “*locating and displaying media elements within the content page record of said database file*” within either of the references, wherein support for rejecting the claim is lacking. Again it will be recognized that Hoffert teaches a method of searching for multimedia files while Loveria teaches the display of a video clip augmented with additional data regions in the clip for synchronization. The cited references do not have the underlying content record structure and thus ability to locate and display media elements from the content record is not supported.

Therefore, Applicant respectfully requests that the rejection of Claim 33 be overturned.

28. Dependent Claim 34

Claim 34 depends from dependent Claim 33 and from independent Claim 3 and in view of the discussion toward patentability of Claim 3, should be considered a *fortiori* allowable.

The claims further describes the multimedia engine as “*wherein said multimedia engine is configured to display media elements within one or more selected windows within said multimedia presentation*”.

There is no support for this as the claim element specifically states how the software engine can display media elements within one or more selected windows within said multimedia presentation, and relates back to claim 33 in which the locating the displaying of the media elements is in relation to the content record of the database. This was generally described already in relation to a portion of Claim 1.

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

Therefore, Applicant respectfully requests that the rejection of Claim 34 be overturned.

29. Dependent Claim 35

Claim 35 depends from dependent Claim 34, dependent Claim 33 and independent Claim 3 and in view of the discussion related toward the patentability of Claim 3 should be considered *a fortiori* allowable.

This claim expands on the description of displaying media in selected windows, by "*wherein said multimedia engine is configured to display images within a main normal width display window or an expanded width window*". In this section it is indicated that the window sizing can be altered. It should be noted that the claim already distinguishes from the references in that the existence and positioning of the window is determined from the content record (and not fixed by the application as taught by Loveria), wherein it now describes the control of window sizing which is another aspect not taught by Loveria which has fixed windows 52, 54 only for text display (See paragraph [0018]).

Accordingly support is lacking for rejecting Claim 35.

Therefore, Applicant respectfully requests that the rejection of Claim 35 be overturned.

30. Dependent Claim 36

Claim 36 depends from dependent Claim 35, dependent Claim 34, dependent Claim 33 and independent Claim 3 and in view of the discussion related toward the patentability of Claim 3 should be considered *a fortiori* allowable.

This claim expands on the description of displaying media in selected windows, by "*said multimedia engine is configured to display images that are too large to comfortably fit either in said main normal width display window, or in said main display expanded width window, and can be stored in a database and displayed in a separate*

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

illustration window”.

In this claim aspect a dynamic aspect is described which again is not found in the relied-upon references. It should be noted that the claim already distinguishes from the references regarding parent claims 35, 34, 33 and 3. Herein additional differentiation is described in which multimedia engine makes sizing decisions - Loveria which has fixed windows 52, 54 only for text display (See paragraph [0018]).

Accordingly support is lacking for rejecting Claim 36.

Therefore, Applicant respectfully requests that the rejection of Claim 36 be overturned.

31. Dependent Claim 37

Claim 37 in an independent claim which is directed to an apparatus for providing multimedia tutorials. It should be noted that neither of the relied upon reference is directed at this inventive object. The Applicant argues that the rejection of Claim 37 also suffers from a number of the same shortcomings as described in relation to Claim 1, in particular:

- (a) Loveria publication (2004/0090466) cited is not prior art;
- (b) Different objects and operating principles;
- (c) Lack of specificity about relied upon combination of reference;
- (d) Obvious to try is not a standard of patentability;
- (e) No need of “element” within the cited reference;
- (f) Obviousness cannot be established using hindsight;
- (g) Rejection based on similarity of inventive concept or idea;
- (h) Elements not found or not equivalent to references;
- (i) Invention to be considered as a whole;
- (j) Unworkable combination; and
- (k) No teaching, suggestion or motivation in references for combination.

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

Claim 37 describes a first element of a database containing multimedia content records and references to media files for a multimedia presentation. As already noted Hoffert does not provide for displaying of a presentation at all, while Loveria only provides for displaying a clip with fixed fields of text and audio synchronized thereto.

A software engine is described for *“seamlessly accessing a content record according to a record index value in said database and locating and displaying media elements referred to in that content record”*, which is one of the many elements for which no support is provided in the cited references. Hoffert does not provide a database of content records, as it is a web indexing mechanism, while Loveria only provides a clip playback structure including synchronization data, it does not define content records having the described attributes. There is no record index value used for the clips in Loveria, while the only attempt at seamless access is attempting through adding synchronization data to the clip file. These elements clearly do not comport with those recited in Claim 37.

In addition, there is nothing in the references which comports to “interpreting embedded instructions within custom tags of said content record for directing access to other content records in said database”. As described previously the tags mentioned by Hoffert do not provide for directing access to other content records.

In addition, there is nothing which comports to *“generating multiple display windows within which content records are to be displayed”*, or to *“controlling which window of said multiple windows that the media elements referred to in said content records are to be displayed”*. As already discussed, Loveria provides fixed windows for displaying text content with a fixed window for playing of the video or image at the start of the video clip.

In addition, there is no discussion of providing the seamless access of media, such as in which *“said software engine does not rely on the execution of individual components or programs which operate independently to display the various media content”*. As discussed Loveria relies on separate section of code for performing each

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

of the functions for each type of media, there is no teaching of integrating this functionality to provide for seamless execution of the multimedia.

Furthermore, there is no discussion of a *"a user interface upon which content is displayed by said software engine"* and *"a toolbar displayed by said software engine having buttons representing the media elements available within said content record"*. There is nothing put forth by the Examiner to support this claim element as well.

Accordingly, numerous aspects of the claims are not found in either reference or combination, the combination not only is unworkable as it does not result in invention as claimed, and there is no suggestion, motivation or incentive for even attempting the combination.

Therefore, a *prima facie* case of obviousness has not been established against Claim 37, wherein Applicant respectfully requests that the rejection of independent Claim 37, and the claims which depend therefrom, be overturned.

32. Dependent Claims 38-40

Claims 38-40 depends from independent Claim 37 and in view of the discussion presented toward patentability of Claim 37 should be considered *a fortiori* allowable.

Dependent Claims 38-40 describe additional aspects of the software engine, the types of media content which can be accessed and displayed, and the controls for access and display.

Applicant respectfully requests that the rejection of Claim 38-40 be overturned.

33. Dependent Claims 41-43

Claims 41-43 depends from dependent Claim 40 and independent Claim 37, and in view of the discussion toward patentability of Claim 37, these claims should be considered *a fortiori* allowable.

Claim 41 includes a description of a toolbar element as *"said toolbar comprises sequence control buttons for selecting tutorial positioning within said content records"*.

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

Claim 42 further defines the toolbar of Claim 41 with "*said toolbar comprises a map control button for selecting a map window which displays the current position of the tutorial in the database index as a highlight within said map window, and is configured for allowing the user to select a topic within said map window which the database index is to be adjusted*".

Claim 43 further defines the toolbar of Claim 42 with "*said map window displays tutorial content in a hierarchical form and which is configured for being expanded or collapsed to provide a selected level of detail about the content.*"

There is no support for the rejection of these elements as provided by the Examiner, and Applicant was unable to locate any relevant teachings in the relied upon references.

Therefore, Applicant respectfully requests that the rejection of Claims 41-43 be overturned.

34. Dependent Claim 44

Claim 44 depends from independent Claim 37, and in view of the discussion toward patentability of Claim 37, this claim should be considered *a fortiori* allowable.

Claim 44 includes a description of a demonstration window as "*a demonstration window displayed by said software engine that may be opened for demonstrating a process being described in said tutorial*".

Examiner provides no support for the rejection of these elements, while Applicant was also unable to find any relevant teachings in the relied upon references.

Therefore, Applicant respectfully requests that the rejection of Claim 44 be overturned.

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

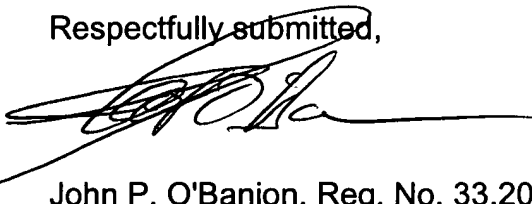
CONCLUSION

Applicant contends that a *prima facie* case of obviousness has not been established by the Examiner in relation to any of pending Claims 1-44 of the instant Application. Numerous shortcomings exist with supporting the rejections which are put forth in an overly general and non-probative nature. Support for the rejections does not include specifics for equating the claim elements with references, how the elements cooperate in the combination put forth, or as to suggestions and motivations for attempting the combination. The vague generalizations asserted throughout these rejections have placed the Applicant in the position of attempting to prove patentability as opposed to overcoming evidence properly put forth in a *prima facie* case of obviousness as properly construed.

Accordingly, the Applicant respectfully requests a determination of the issues presented herein, as well as a determination that Claims 1-44 are allowable.

Date: 9/26/05

Respectfully submitted,



John P. O'Banion, Reg. No. 33,201
O'BANION & RITCHEY LLP
400 Capitol Mall, Suite 1550
Sacramento, CA 95814
(916) 498-1010

Appendix: Listing of pending Claims 1-44

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

CLAIMS APPENDIX

1. An apparatus for accessing and displaying multimedia content, comprising:

(a) database means for storing multimedia content records and associated references to media files for a multimedia presentation; and

(b) software engine means, executable on a computer, for seamlessly accessing a content record in said database means according to a record index value and locating and displaying associated media elements referred to in the indexed content record;

wherein said software engine means is configured for interpreting embedded instructions within custom tags of said content record that direct access to other content records in said database; and

wherein said software engine means is configured for generating multiple windows and controlling within which window the media elements referred to in said content records are to be displayed.

2. An apparatus for accessing and displaying multimedia content, comprising:

a database containing multimedia content records and references to media files for a multimedia presentation;

a software engine, executable on a computer, configured for seamlessly accessing a content record in said database according to a record index value and locating and displaying media elements referred to in that content record; and

programming executable on said software engine for,

interpreting embedded instructions within custom tags of said content record for directing access to other content records in said database,

generating multiple display windows within which content records are to be displayed,

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

controlling which window of said multiple windows that the media elements referred to in said content records are to be displayed.

3. An apparatus for accessing and displaying multimedia content, comprising:

- a programmable data processor;
- a database containing multimedia content records and references to media files for a multimedia presentation; and
- programming associated with said programmable data processor for,
 - accessing, seamlessly, a content record in said database according to a record index value,
 - locating and displaying media elements referred to in said content record,
 - interpreting embedded instructions within custom tags of said content record for directing access to other content records in said database,
 - generating multiple display windows within which content records are to be displayed,
 - controlling which window of said multiple windows that the media elements referred to in said content records are to be displayed.

4. A computer program for accessing and displaying multimedia content, comprising:

- a set of instructions stored on a media accessible by a computer and executable as programming on said computer;
- wherein said programming is configured for,
 - seamlessly accessing a content record in a database, according to a record index value, said records containing HTML content and custom tags readable by said programming,

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

wherein one or more of said custom tags point to other content records in the database,

locating and displaying media elements within one of multiple windows generated by said programming and referred to in that content record.

5. A multimedia delivery apparatus, comprising:

(a) a database containing multimedia content records and references to media files for a multimedia presentation;

(b) a software delivery engine associated with said database and executable on a computer for seamlessly displaying content records accessed according to a record index value into said database; and

(c) programming within said delivery engine for,
generating multiple display windows,

interpreting custom tags embedded in said content records of said database, one or more of said custom tags pointing to other content records in said database, and

locating and displaying within one of said multiple display windows, said content record, regardless of whether said media elements are stored on a local storage device or stored remotely on an Internet server to provide a single seamless multimedia application for displaying media elements.

6. A method for displaying multimedia content, comprising:

storing in a database, multimedia content records and references to media files for a multimedia presentation;

seamlessly accessing, using a software engine executable on a computer, a content record in said database accessed according to a record index value;

interpreting custom tags embedded in said content records of said database, one or more of said custom tags pointing to other content records in said database;

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

generating multiple display windows; and
locating and displaying media elements referred to in said content record within
one or more of said multiple display windows.

7. An apparatus as recited in claim 1:
wherein at least one of said multimedia content records includes at least one
custom tag;
wherein said software engine is configured to read said custom tag;
wherein said custom tag instructs said engine to fetch a corresponding
multimedia content record from said database;
wherein said software engine reads said multimedia content record; and
wherein said at least said portion of said content page is passed to an interface
program for display.

8. An apparatus as recited in claim 7:
wherein said software engine generates a temporary local copy of at least a
portion of a content page from that multimedia content record for display; and
wherein said displayed content page contains at least one custom tag for further
navigation.

9. An apparatus as recited in claim 2:
wherein at least one of said multimedia content records includes at least one
custom tag;
wherein said software engine is configured to read said custom tag;
wherein said custom tag instructs said engine to fetch a corresponding
multimedia content record from said database;
wherein said software engine reads said multimedia content record; and

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

wherein at least said portion of said content page is passed to an interface program for display.

10. An apparatus as recited in claim 9:
wherein said software engine generates a temporary local copy of at least a portion of a content page from that multimedia content record for display; and
wherein said displayed content page contains at least one custom tag for further navigation.

11. An apparatus as recited in claim 3:
wherein at least one of said multimedia content records includes at least one custom tag;
wherein said software engine is configured to read said custom tag;
wherein said custom tag instructs said engine to fetch a corresponding multimedia content record from said database;
wherein said software engine reads said multimedia content record; and
wherein said at least said portion of said content page is passed to an interface program for display.

12. An apparatus as recited in claim 11:
wherein said software engine generates a temporary local copy of at least a portion of a content page from that multimedia content record for display; and
wherein said displayed content page contains at least one custom tag for further navigation.

13. An apparatus as recited in claim 4:
wherein at least one of said multimedia content records includes at least one custom tag;

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

wherein said software engine is configured to read said custom tag;
wherein said custom tag instructs said engine to fetch a corresponding multimedia content record from said database;
wherein said software engine reads said multimedia content record; and
wherein said at least said portion of said content page is passed to an interface program for display.

14. An apparatus as recited in claim 13:
wherein said software engine generates a temporary local copy of at least a portion of a content page from that multimedia content record for display; and
wherein said displayed content page contains at least one custom tag for further navigation.

15. An apparatus as recited in claim 5:
wherein at least one of said multimedia content records includes at least one custom tag;
wherein said software engine is configured to read said custom tag;
wherein said custom tag instructs said engine to fetch a corresponding multimedia content record from said database;
wherein said software engine reads said multimedia content record; and
wherein said at least said portion of said content page is passed to an interface program for display.

16. An apparatus as recited in claim 15:
wherein said software engine generates a temporary local copy of at least a portion of a content page from that multimedia content record for display; and
wherein said displayed content page contains at least one custom tag for further navigation.

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

17. A method as recited in claim 6:
wherein at least one of said multimedia content records includes at least one custom tag;
wherein said software engine is configured to read said custom tag;
wherein said custom tag instructs said engine to fetch a corresponding multimedia content record from said database;
wherein said software engine reads said multimedia content record; and
wherein said at least said portion of said content page is passed to an interface program for display.

18. A method as recited in claim 17:
wherein said software engine generates a temporary local copy of at least a portion of a content page from that multimedia content record for display; and
wherein said displayed content page contains at least one custom tag for further navigation.

19. An apparatus for accessing and displaying multimedia content, comprising:
a database containing multimedia content records and references to media files for a multimedia presentation;
a software engine, executable on a computer for seamlessly accessing a content record in said database according to a record index value and locating and displaying media elements referred to in that content record; and
programming executable on said software engine for,
interpreting embedded instructions within custom tags of said content record for directing access to other content records in said database,

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

generating multiple display windows within which content records are to be displayed, and
controlling which window of said multiple windows that the media elements referred to in said content records are to be displayed;
wherein at least one of said multimedia content records includes at least one custom tag;
wherein said software engine is configured to read said custom tag;
wherein said custom tag instructs said engine to fetch a corresponding multimedia content record from said database;
wherein said software engine reads said multimedia content record;
wherein said software engine generates a temporary local copy of at least a portion of a content page from that multimedia content record for display; and
wherein said at least said portion of said content page is passed to an interface program for display.

20. An apparatus as recited in claim 1, wherein said seamless accessing of content records in said database does not rely on the execution of individual components of programs which operate independently to display the various media content while not providing for any integration of the applications.

21. An apparatus as recited in claim 2, wherein said seamless accessing of content records in said database does not rely on the execution of individual components of programs which operate independently to display the various media content while not providing for any integration of the applications.

22. An apparatus as recited in claim 3, wherein said seamless accessing of content records in said database does not rely on the execution of individual

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

components of programs which operate independently to display the various media content while not providing for any integration of the applications.

23. An apparatus as recited in claim 4, wherein said seamless accessing of content records in said database does not rely on the execution of individual components of programs which operate independently to display the various media content while not providing for any integration of the applications.

24. An apparatus as recited in claim 19, wherein said seamless accessing of content records in said database does not rely on the execution of individual components of programs which operate independently to display the various media content while not providing for any integration of the applications.

25. A multimedia delivery engine implemented as executable routines on a computer readable media for the seamless delivery of varied multimedia content to a user, comprising:

(a) a reader routine configured to access records within a database according to a record index value;

wherein said records comprise HTML content and custom tags configured for reading by said reader routine;

(b) a display window routine for generating multiple display windows within which record content is displayed;

(c) a writing routine configured to write HTML text content of said HTML record content to a temporary cache file adapted for being read by an interface program for displaying said HTML text content in a display window;

(d) a custom HTML tag processing routine configured to,

(i) locate records in said database in response to a record index or a custom tag within a record that points to another record of said database, copy

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

record content to a temporary cache file, and display HTML content of said temporary cache file inclusive of graphics and hyperlinks contained therein,

(ii) locate and seamlessly display images located within local storage devices within an illustration window in response to a custom tag directed at local storage resources,

(iii) load and run media components according to a custom tag from links or links within database records that are located in a local storage media or over a network connection as determined by said processing routine,

(iv) load web server-based content according to an additional custom tag; and

(e) wherein varied multimedia content from local and remote storage and content of additional database records may be accessed and displayed as one seamless multimedia application.

26. A multimedia delivery engine as recited in claim 25, wherein said varied multimedia content comprises both high-bandwidth media for storage across local devices and current and time-sensitive content for storage remotely on an Internet server.

27. A multimedia delivery engine as recited in claim 26, wherein said high-bandwidth media comprises content retrieved from at least one mass storage device.

28. A multimedia delivery engine as recited in claim 25, wherein said multimedia delivery engine does not rely on the execution of individual components of programs which operate independently to display the various media content while not providing for any integration of the applications.

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

29. A method of delivering varied multimedia from a network enabled computer system in response to the contents of a database, comprising:

- (a) accessing HTML record content within a database according to a record index value;
- (b) writing HTML text content of said HTML record content to a temporary cache file adapted for being read by an interface program for displaying said HTML text content in one of multiple display windows;
- (c) locating records in said database in response to a custom tag pointing to said database, copying record content to a temporary cache file, and controlling which window of said multiple windows for displaying HTML content of said temporary cache file which can include graphics and hyperlinks;
- (d) locating and displaying images located within local storage devices within an illustration window in response to a custom tag directed at local storage resources;
- (e) interpreting embedded instructions within custom tags of said content record for directing access to other content records in said database;
- (f) loading and running media components according to a custom tag from links or links within database records that may be located in a local storage media or over a network connection; and
- (g) loading web server-based content according to an additional custom tag;
- (h) wherein varied multimedia content from local and remote storage and content of additional database records may be accessed and displayed as one seamless multimedia application.

30. A method as recited in claim 29, wherein said varied multimedia content comprises both high-bandwidth media for storage across local devices and current and time-sensitive content for storage remotely on an Internet server.

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

31. A method as recited in claim 29, wherein said high-bandwidth media comprises content retrieved from at least one mass storage device.

32. A method as recited in claim 29, wherein said method does not rely on the execution of individual components of programs which operate independently to display the various media content while not providing for any integration of the applications.

33. An apparatus as recited in claim 3, wherein said programming associated within said programmable data processor comprises a multimedia engine configured to locate and display all of the media elements referred to within a given content page record of said database file.

34. An apparatus as recited in claim 33, wherein said multimedia engine is configured to display media elements within one or more selected windows within said multimedia presentation.

35. An apparatus as recited in claim 34, wherein said multimedia engine is configured to display images within a main normal width display window or an expanded width window.

36. An apparatus as recited in claim 35, wherein said multimedia engine is configured to display images that are too large to comfortably fit either in said main normal width display window, or in said main display expanded width window, and can be stored in a database and displayed in a separate illustration window.

37. An apparatus for providing multimedia tutorials, comprising:
a database containing multimedia content records and references to media files for a multimedia presentation;

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

a software engine, executable on a computer, said software engine seamlessly accessing a content record according to a record index value in said database and locating and displaying media elements referred to in that content record;

programming executable on said software engine for,

interpreting embedded instructions within custom tags of said content record for directing access to other content records in said database,

generating multiple display windows within which content records are to be displayed, and

controlling which window of said multiple windows that the media elements referred to in said content records are to be displayed;

wherein said software engine does not rely on the execution of individual components or programs which operate independently to display the various media content; and

a user interface upon which content is displayed by said software engine;
a toolbar displayed by said software engine having buttons representing the media elements available within said content record.

38. An apparatus as recited in claim 37, wherein said software engine includes a reader portion that locates and displays all of the media elements referred to in that record of said database.

39. An apparatus as recited in claim 37, wherein said media content comprises video, audio, animation, or images.

40. An apparatus as recited in claim 37, wherein said toolbar provides controls for video media elements, audio media elements, and demonstration media elements.

Appl. No.: 09/262,172
Filing Date: 03/03/1999
Appeal Brief Dated: 09/26/2005
Tech. Center: 2172

41. An apparatus as recited in claim 40, wherein said toolbar comprises sequence control buttons for selecting tutorial positioning within said content records.

42. An apparatus as recited in claim 41, wherein said toolbar comprises a map control button for selecting a map window which displays the current position of the tutorial in the database index as a highlight within said map window, and is configured for allowing the user to select a topic within said map window which the database index is to be adjusted.

43. An apparatus as recited in claim 42, wherein said map window displays tutorial content in a hierarchical form and which is configured for being expanded or collapsed to provide a selected level of detail about the content.

44. An apparatus as recited in claim 37, further comprising a demonstration window displayed by said software engine that may be opened for demonstrating a process being described in said tutorial.

CERTIFICATION UNDER 37 CFR 1.8

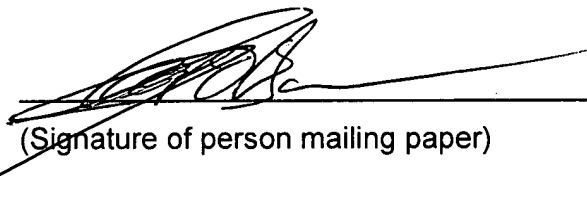
I hereby certify that the foregoing:

Appeal Brief with Claims Appendix

is being deposited with the United States Postal Service on September 26, 2005
with sufficient postage as first class mail in an envelope addressed to the:
Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

JOHN P. O'BANION

(Type or print name of person mailing paper)

A handwritten signature in black ink, appearing to read 'John P. O'Banion', is written over a horizontal line. The signature is stylized with a large initial 'J' and a long horizontal stroke extending to the right.

(Signature of person mailing paper)